



Order under Section 69 Residential Tenancies Act, 2006

Citation: Dhillon v Taylor, 2023 ONLTB 13642

Date: 2023-01-04

File Number: LTB-L-005955-22-RV

In the matter of: 2, 44 METCALFE ST
THOROLD ON L2V2Z9

Between: Sandeep Dhillon Landlord

And

Arran Taylor and Fred Taylor Tenants

Review Order

Sandeep Dhillon (the 'Landlord') applied for an order to terminate the tenancy and evict Arran Taylor and Fred Taylor (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was resolved by order LTB-L-005955-22 issued on August 24, 2022.

On September 2, 2022 the Tenant, Arran Taylor requested a review of the order and alleges he was not reasonable able to participate.

On September 6, 2022, interim order LTB-L-005955-22-RV-IN was issued, directing the matter to proceed to a review hearing.

This request to review was heard by videoconference in hearing room VC102 on September 28, 2022. The Landlord's legal representative, Curt Anderson attended the hearing. The Tenant Arran Taylor attended the hearing and stated he had previously spoken with Tenant Duty Counsel.

Determinations:

Request to Review:

1. On a balance of probabilities, I accept the Tenant's submission that he telephoned into the scheduled hearing on August 15, 2022 and that he was disconnected from the hearing and was unable to connect by telephone to rejoin the hearing. I find this constitutes that the Tenant was not reasonably able to participate in the hearing. The Tenant stated that he had spoken with Tenant Duty Counsel at the hearing and engaged in settlement discussions in a virtual break out room with the Landlord. The Landlord conceded that the Landlord and Tenant engaged in private settlement discussions on the date of the hearing.

The Landlord inquired if the Tenant deliberately disconnected from the hearing out of anger during the settlement discussions and the Tenant responded he did not. The Tenant stated he only had an email address for the Landlord's legal representative but could not email the Landlord's legal representative to advise he was unable to rejoin the hearing by telephone. because his internet was not working.

2. The Tenant's request to review is granted. As a result, order LTB-L-005955-22 issued on August 24, 2022 was cancelled, and a new hearing was to be held to consider the merits of the original L1 application ('application').

Adjournments

1. The matter was adjourned as the amount owing for the arrears was contested and the Landlord had not produced a rent ledger. An oral ruling was made and an interim order LTB-L-005955-22-IN was issued on October 6, 2022 directing the Tenant to pay the ongoing monthly rent on or before October 1, 2022 until the matter is brought back before me as I remained seized of the matter. The matter was rescheduled for November 30 2022.
2. On November 30, 2022, the application was to be heard by videoconference on VC line 132. The Landlord, Sandeep Dhillon and the Landlord's legal representative, Curt Anderson attended the hearing. The Tenant, Arran Taylor attended the hearing.
3. A further adjournment was granted at the hearing because the Tenant, Arran Taylor stated he had a medical emergency which required him to take his son to the hospital. I directed at the hearing that the Tenant, Arran Taylor would need to produce written documentation i.e., a medical note which confirms the Tenant's attendance at a medical facility to address a medical emergency with his son which necessitated an adjournment on November 30, 2022. The Landlord and the Tenant agreed to a new hearing date to be scheduled for December 16, 2022 at 9:00 am. Another interim order LTB-L-005955-22-IN2 was issued on December 1, 2022.

Merits of L1 application

This application was heard by videoconference on December 16, 2022 on videoconference line VC137. The Landlord, Sandeep Dhillon and the Landlord's legal representative, Curt Anderson attended the hearing.

As of 9:32 am, neither of the Tenants were present or represented at the hearing although properly served with notice of this hearing by the Board. The Board's records indicate a notice of hearing was mailed to the Tenants at the rental unit address on December 2, 2022. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Preliminary issue:

1. The Landlord, Sandeep Dhillon stated he purchased the residential complex on September 1, 2022 from the prior Landlord Bodo Maslabey. The Landlord filed an amended

application on September 19, 2022 which requests to amend the Landlord's name from Bodo Maslabey to Sandeep Dhillon and an assignment of this application signed by Bodo Maslabey and Sandeep Dhillon was filed with the amended application.

2. The application is amended to remove the prior Landlord, Bodo Maslabey and add the new Landlord, Sandeep Dhillon.
3. The Landlord stated correspondence regarding the rent arrears since the Notice to End Tenancy Early for Non-payment of Rent ('N4 Notice') was served has been with the Tenant, Arran Taylor. The Landlord stated it does not have confirmation when the Tenant Fred Taylor has vacated the rental unit. The Landlord stated as a result, it does not want to amend the application to remove Fred Taylor from the application. Therefore, as this was uncontested at the hearing, I accept Fred Taylor is still a Tenant at the rental unit.

Determinations:

4. The Landlord served the Tenant with a valid N4 Notice. The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
5. As of the hearing date, the Tenants were still in possession of the rental unit.
6. At the time the L1 application was filed, the monthly rent was \$1,250.00. The lawful rent increased to \$1,265.00 on May 1, 2022. It is due on the 1st day of each month
7. The rent ledger produced by the Landlord notes that \$4,165.00 was paid for the period December 1, 2021 – April 30, 2022 (\$500.00 paid on December 17, 2021, \$1,150.00 paid on January 29, 2022, \$800.00 paid on February 27, 2022, \$450.00 paid on March 31, 2022, and \$1265.00 paid for April 29, 2022). The Landlord confirmed receipt of these amounts and stated that \$1,265.00 was paid on September 29, 2022.
8. The application originally filed on February 2, 2022 and claims \$2,000.00 was paid and the rent arrears are \$1,750.00 for the period December 1, 2021 - February 28, 2022. This does not align with the rent ledger which notes \$1,650.00 was paid prior to the application being filed. The Landlord agreed. The application will not be amended to reflect an amount higher than what was claimed on the application because the Tenants did not attend the hearing and therefore were not able to respond.
9. I accept \$3,780.00 has been paid since the application was filed. The L1 update sheet produced by the Landlord notes \$3,780.00 was paid after the application was filed which was confirmed by the Landlord at the hearing. I find this amount aligns with the rent ledger which notes \$2,515.00 was paid towards the monthly rent for the period from February 27, 2022 – August 2022. I accept the uncontested testimony of the Landlord that \$1,265.00 was paid on September 29, 2022.
10. Upon further review of the L1 update sheet, I find the amounts claimed by the Landlord in the L1 update sheet are correct. This is based on my finding that the arrears are \$1,750.00 for the period December 1, 2021 – February 28, 2022. Since the application was filed on February 2, 2022, the monthly rent due for the period March 1, 2022 – December 31, 2022

totals \$12,620.00. These amounts total \$14,370.00 (\$1,750.00 + \$12,620.00), less amounts paid \$3,780.00 since the application as filed.

11. The rent arrears owing to December 31, 2022 are \$10,590.00.
12. Based on the Monthly rent, the daily rent/compensation is \$41.59. This amount is calculated as follows: \$1,265.00 x 12, divided by 365 days.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. There is no last month's rent deposit.
15. The Landlord attempted to negotiate a repayment plan with the Tenants without success. I accept the Landlord's submission that the Landlord included a letter inviting the Tenants to negotiate a payment plan for the arrears when the Landlord served the N4 Notice on the Tenants and that no response was received. I accept the Landlord's submission that the Landlord's legal representative attempted to contact the Tenants by telephone on multiple occasions but did not reach the Tenants. I also accept the uncontested evidence at the review hearing on August 28, 2022 that the Landlord and the Tenant Arran Taylor were engaged in settlement discussions in a virtual break out room on August 24, 2022. As a result, I find that the Landlord fulfilled its duties to attempt resolution of the application during the COVID-19 pandemic pursuant to subsection 83(6) of the *Residential Tenancies Act, 2006* (the 'Act').
16. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. A request for review was granted on September 28, 2022 but neither Tenant attended the scheduled hearing on December 16, 2022, despite the Tenant Arran Taylor agreeing to this hearing date on November 30, 2022. The Tenants have not complied with my interim order dated October 6, 2022 which directed the ongoing monthly rent be paid until the matter is brought back before me. The application was filed 10 months ago, and I find the arrears are significant. I find it would be prejudicial to the Landlord to grant relief from eviction.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$12,041.00 if the payment is made on or before January 16, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after January 16, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.

4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before January 16, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$10,176.44. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$41.59 per day for the use of the unit starting December 17, 2022 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before January 15, 2023, the Tenants will start to owe interest. This will be simple interest calculated from January 16, 2023 at 5.00% annually on the balance outstanding.
8. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
9. If the unit is not vacated on or before January 16, 2023, then starting January 17, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after January 17, 2023.

2023 ONLTB 13642 (CanLII)

January 4, 2023
Date Issued

Kimberly Parish
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on July 17, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

Schedule 1
SUMMARY OF CALCULATIONS

A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before January 16, 2023

Rent Owing To January 31, 2023	\$15,635.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,780.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$12,041.00

B. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$13,770.44
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,780.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$0.00
Total amount owing to the Landlord	\$10,176.44
Plus daily compensation owing for each day of occupation starting December 17, 2022	\$41.59 (per day)