



Order under Section 69 Residential Tenancies Act, 2006

Citation: Homestead Land Holdings Limited v Niven Smith, 2022 ONLTB 13154

Date: 2022-12-09

File Number: LTB-L-022475-22

In the matter of: 913, 33 FALBY CRT
AJAX ON L1S3R3

Between: Homestead Land Holdings Limited Landlord

And

Tessia Niven Smith Tenant

The Landlord’s legal representative, Andrew Hyland, attended the hearing. The Tenant and the Tenant’s legal representative, Nadine Robertson attended the hearing.

Determinations:

PRELIMINARY ISSUE: TENANT REQUESTED AN ADJOURNMENT

1. The Tenant’s legal representative requested an adjournment for the following reasons:
 - The Tenant had only become aware of the hearing on October 27, 2022, retained legal council on October 29, 2022, and legal council was requesting time to prepare the file, and gather more information for the hearing.
 - The Tenant’s legal representative requested an adjournment to gather information on the Tenant’s s. 82 claims in order to build the case for the claims.
 - The Tenant had applied for social assistance and the Tenant’s legal representative needed time to acquire the Tenant’s information on that process in order to provide an update on the arrears.
 - Property standards by-law were attending unit, in the near future and their findings may have an impact on the financials of the Landlord’s application.

2. For the following reasons, I denied the Tenant’s request for an adjournment.

3. The position of the Tenant is she claims to have only been made aware of the hearing when she received the Board copy of the Notice of Hearing and accompanying documents on October 27, 2022. The Tenant retained legal counsel two days later on October 29,

2022 nine days before the hearing. The basis for the adjournment request is to allow the Tenant's legal representative time to review and prepare the file. The right to legal counsel is not absolute and the Tenant was represented at the hearing. I also note that the Board's records show that the Board mailed out the Notice of Hearing eighteen days before the hearing. In consideration of all the submissions from the Tenant, the Landlord's evidence supports that the Landlord served the Tenant with the N4 notice on March 16, 2022, and attempted communication with the Tenant to notify her of the arrears, giving the Tenant more than sufficient time to retain legal counsel prior to the hearing.

4. The Tenant failed to meet the Board's requirements set out in the Rules of Practice and Procedure with respect to evidence submissions and did not properly identify the s. 82 claims, or provide the s. 82 claims within the proper time to the Board or the Landlord. Specifically, the rules provide:

19.4 Unless the LTB has directed or ordered otherwise, a tenant who intends to raise issues under sections 82(1) or 87(2) of the RTA during a hearing for a landlord's application about rent arrears shall provide the other parties and the LTB with the following at least 7 days before the scheduled CMH or hearing:

- 1. a written description of each issue the tenant intends to raise; and*
- 2. a copy of all documents, pictures and other evidence that the tenant intends to rely upon at the hearing.*

The Tenant's s. 82 claims were denied and the Tenant can file her own application with the Board if she so chooses.

5. The arrears were not in dispute. As the Tenant was not disputing the arrears being claimed by the Landlord, and the L1 application is based on arrears owing, there was no compelling evidence provided by the Tenant not to proceed with the hearing, and as such the only matter before me was if the Tenant was seeking a repayment plan with the Landlord, and whether the repayment plan satisfied preserving the tenancy for the Tenant, and allowed the Landlord to be paid the arrears in a reasonable time.
6. There was no evidence submitted to the Board regarding the claims that property standards were attending the Tenant's rental unit for an inspection. There was no evidence to support a specific time or date when this inspection was to occur, and the submissions are not relevant to the application before the Board pertaining to the arrears the Landlord is seeking. The Tenant can file her own application with the Board pending any future inspection.

LANDLORD'S APPLICATION

7. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (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.

8. As of the hearing date, the Tenant was still in possession of the rental unit.
9. The lawful rent is \$1,924.82. It is due on the first day of each month.
10. Based on the Monthly rent, the daily rent/compensation is \$63.28. This amount is calculated as follows: $\$1,924.82 \times 12$, divided by 365 days.
11. The Tenant has not made any payments since the application was filed.
12. The rent arrears owing to November 30, 2022 are \$4,015.08.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. The Landlord collected a rent deposit of \$1,940.99 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.

RELEIF FROM EVICTION

15. The position of the Tenant is that she is not working and is receiving social assistance and child tax income. The Tenant is a single mom of four children all under the age of fifteen, and is the sole provider for her family. The Tenant is not disputing the arrears and submitted she was willing to work out a repayment plan with the Landlord to pay the arrears and preserve the tenancy. The Tenant testified she made a good faith payment on the day of hearing of \$250.00 in an effort to stay in the rental unit.
16. The position of the Landlord is that the arrears owed by the Tenant are substantial, and the Tenant has made no payment since the application was filed with the Board. The Landlord has made several attempts to communicate with the Tenant that have gone unanswered. The Landlord submitted they tried mediation before the hearing in a final attempt to resolve the arrears but were unable to come to agreement. The Landlord rejected the Tenant's repayment plan of \$250.00 per month citing it would take sixty eight months to repay the arrears owed to the Landlord, and the Landlord is seeking a standard order for eviction and payment of arrears.
17. Tenant has made no payments to the Landlord since February 2022, although, the Tenant submitted she made a \$250.00 payment the day of the hearing, this could not be confirmed at the time of the hearing. The Tenant is unemployed and is a single mother of four children all under the age of fifteen. The Tenant receives income by social assistance and receives child tax payments. The Tenant's repayment plan of \$250.00 per month for sixty eight months is an unreasonable amount of time to allow the Tenant to pay the arrears. Given the quantum of the arrears, and the fact that no payments have been made since the Landlord filed the application, I considered the prejudice to the Landlord on a long delay order for eviction and the fact that the arrears are substantial. Weighing the Tenant's situation with respect to her four children, and allowing her time to seek financial

relief through other means of social assistance, I am granting the Landlord's request for eviction, however I find it not unreasonable to delay the eviction. This will allow the Tenant time to seek other means of social assistance to pay the arrears, or allow time for the Tenant to find more appropriate housing for her and her children's needs.

13. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until January 20, 2023 pursuant to subsection 83(1)(b) of the Act.
14. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
15. This order contains all reasons for the determinations and order made. No further reasons will be issued.

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It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:
 - \$19,599.64 if the payment is made on or before December 31, 2022. See Schedule 1 for the calculation of the amount owing.

OR

 - \$21,524.46 if the payment is made on or before January 20, 2023. See Schedule 1 for the calculation of the amount owing.

3. The Tenant 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 20, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before January 20, 2023
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$14,315.25. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$63.28 per day for the use of the unit starting November 9, 2022 until the date the Tenant moves out of the unit.

7. If the Tenant does not pay the Landlord the full amount owing on or before January 20, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 21, 2023 at 4.00% 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 20, 2023, then starting January 21, 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 21, 2023.

December 9, 2022
Date Issued

Greg Brocanier
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 21, 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.

*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

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 December 31, 2022

Rent Owing To December 31, 2022	\$19,413.64
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	- \$
Total the Tenant must pay to continue the tenancy	\$19,599.64

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before January 20, 2023

Rent Owing To January 31, 2023	\$21,338.46
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	\$21,524.46

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

Rent Owing To Hearing Date	\$16,070.24
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	- \$1,940.99
Less the amount of the interest on the last month's rent deposit	- \$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	- \$
Total amount owing to the Landlord	\$14,315.25
Plus daily compensation owing for each day of occupation starting November 9, 2022	\$63.28 (per day)