



Order under Section 69 Residential Tenancies Act, 2006

Citation: Walker v Yusek, 2022 ONLTB 13977

Date: 2022-12-08

File Number: LTB-L-014828-22

In the matter of: 67 McDONAGH CRESCENT
THOROLD ON L2V 4S4

Between: Diane Walker Landlord

And

Debbie Yusek Tenant

Diane Walker (the 'Landlord') applied for an order to terminate the tenancy and evict Debbie Yusek and Erin-Leigh Yusek (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on September 27, 2022 at 11:26 a.m.

The Landlord Diane Walker and the Tenant Debbie Yusek attended the hearing.

Preliminary Issue:

1. It was undisputed that Erin-Leigh Yusek was listed in error as a Tenant and the parties consented to remove her from the Application.

Determinations:

1. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,454.24. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$47.81. This amount is calculated as follows: \$1,454.24 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to September 30, 2022 are \$9,492.27.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

8. The Landlord collected a rent deposit of \$1,555.31 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.
9. The interest on the rent deposit owing is \$23.32.

Relief from Eviction

10. 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 8, 2023 pursuant to subsection 83(1)(b) of the Act.
11. The Tenant testified that the cause of the arrears was because her income had changed as of December 21, 2021 when her ex-husband retired and was no longer required to pay the Tenant alimony. Previously, while receiving the alimony payments, the Tenant's income was \$2000.00 per month. After the alimony payment ceased, the Tenant's income was reduced to \$990.00 per month and this is the amount the Tenant receives.
12. The Tenant testified she has been searching for a new unit since May 2022; however, since she has a poor credit rating, limited income and 2 dogs and a cat, finding an affordable unit that is pet-friendly has been challenging.
13. The Tenant testified that should they be evicted, would require additional time, at most approximately 2 months to search for a suitable unit.
14. The Landlord testified that the arrears are significant, and she requires the rental income to afford the mortgage payments on the home. She has been considering selling the property unless there is a resolution (either full payment of the lawful monthly rent including the arrears, or an eviction where they could replace the current Tenant with a new tenant who could afford the lawful monthly rent). Further, the Landlord testified they have been in contact with the Tenant regularly to try and negotiate a repayment plan and no progress has been made so there is no indication that the Tenant would be able to commit to a payment plan.
15. I have weighed the evidence of both parties and considered all the circumstances and am not persuaded the Tenant has the required income to make any payments towards the outstanding arrears in addition to paying the lawful monthly rent. However, I am persuaded that due to the Tenant's circumstances, there are some challenges involved in finding a new affordable unit for the Tenant and her pets, and that the eviction should be delayed until January 7, 2023.

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:**
 - \$14,040.99 if the payment is made on or before December 31, 2022. See Schedule 1 for the calculation of the amount owing.

OR

- \$15,495.23 if the payment is made on or before January 7, 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 7, 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 7, 2023**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$7,956.21. 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 \$47.81 per day for the use of the unit starting September 28, 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 7, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 8, 2023 at 4.00% annually on the balance outstanding.
 8. If the unit is not vacated on or before January 7, 2023, then starting January 8, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
 9. 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 8, 2023.

December 8, 2022
Date Issued

 Greg Witt
 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 7, 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 December 31, 2022

Rent Owing To December 31, 2022	\$13,854.99
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	\$14,040.99

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before January 7, 2022

Rent Owing To January 31, 2022	\$15,309.23
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	\$15,495.23

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

Rent Owing To Hearing Date	\$9,348.84
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	- \$1,555.31
Less the amount of the interest on the last month's rent deposit	- \$23.32

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 amount owing to the Landlord	\$7,956.21
Plus daily compensation owing for each day of occupation starting September 28, 2022	\$47.81 (per day)

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