



Order under Section 69 Residential Tenancies Act, 2006

Citation: Ekanayaka v Alama, 2022 ONLTB 13717

Date: 2022-12-07

File Number: LTB-L-013186-22

In the matter of: Basement room 1, 120 VALDOR DR
SCARBOROUGH ON M1V 1R5

Between: Mark Ekanayaka Landlord

And

Phillipe Yvon Tchekane Alama Tenant

Mark Ekanayaka (the 'Landlord') applied for an order to terminate the tenancy and evict Phillipe Yvon Tchekane Alama (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on September 13, 2022 at 11:28 a.m.

The Landlord Mark Ekanayaka and the Tenant Phillipe Yvon Tchekane Alama attended the hearing.

Preliminary Issues:

Service of the N4 Notice of Termination

1. The Tenant testified they had never received a Notice of Termination (N4).
2. The Landlord testified he served the N4 by placing it under the Tenant's door on February 4, 2022 in basement room number 1, and took a photograph of the N4 substantiating this testimony, which was submitted into evidence. The photo is consistent with the Landlord's testimony and indicates that the Landlord served the N4 Notice on February 4, 2022 by placing the document under the Tenants' door.
3. When I consider all of the evidence, I find that it is more likely than not that the Landlord served the Tenants with the N4 Notice on February 4, 2022 as the Landlord's testimony is consistent with the photographic evidence. In the circumstances, I am satisfied that the Landlord did in fact serve the N4 Notice on the Tenant and the method and timing of service complies with the Act. The hearing proceeded based on this determination.

Disclosure of Evidence

4. The Tenant testified that a screenshot of a Toronto Police Service Records request, a piece of the Landlord's evidence, was not entered into evidence at least 7 days before the

hearing as required by LTB Rule of Practice 19.1 and as such, the Tenant sought to exclude this evidence.

5. The submission date of this piece of evidence was September 8, 2022, only 5 days before the date of the hearing. Pursuant to Rule 19.1, all parties to a matter that has been scheduled for a CMH or a hearing must provide the other parties and the LTB with a copy of all documents, pictures and other evidence that the party intends to rely upon at least 7 days before the CMH or hearing.
6. As this piece of evidence was not submitted in accordance with Rule 19.1, I find it is not to be admitted into evidence.

Determinations:

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 \$500.00. It is due on the 1st day of each month.
10. Based on the Monthly rent, the daily rent/compensation is \$16.44. This amount is calculated as follows: \$500.00 x 12, divided by 365 days.
11. The Tenant has not made any payments since the application was filed.
12. The rent arrears owing to September 30, 2022 are \$4,500.00.
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 \$500.00 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.
15. The interest owing on the deposit is \$15.00.

Section 82 Issues – Harassment

Tenant's Evidence

16. The Tenant testified the Landlord sent him a N12 Notice of Termination on December 2, 2021. The Tenant thought this was unfair and harassing behaviour, and then stopped paying rent beginning in January 2022 for this reason.
17. The Tenant further testified that he received a letter from the Landlord dated January 8, 2022 alleging the Tenant was engaged in behaviour that was substantially interfering with the enjoyment of other tenants on the property and that he considered this letter to be an additional form of harassment.

18. The Tenant further alleged the former Tenant left a post-it note on January 1, 2022 containing insulting language towards him. The Tenant alleged that while a former tenant of the building wrote the note, the Landlord was working covertly and in tandem with the former tenant to harass the Tenant. He further testified that this impacted him as a person of colour in Toronto.
19. The Tenant testified that he had only interacted with the Landlord's agent, Thomas Ekanayaka, and had assumed that Thomas Ekanayaka was in fact the Landlord. The Tenant alleged the Landlord intentionally tried to confuse the Tenant by using an agent to liaise with him and that this caused him stress and contributed to the harassing behaviour.

Landlord's Evidence

20. On January 8, 2022, the Landlord testified he sent a letter to the Tenant alleging the Tenant was engaged in behaviour that was substantially interfering with the enjoyment of other Tenant's on the property. This letter was submitted into evidence and the Landlord claimed it was in fact the Tenant's behaviour that was inappropriate and noisy.
21. As for the insulting language on the post it note dated January 1, 2022, it clearly is from the previous tenant, and not from the Landlord or his agent. In fact, the Landlord's agent in the text message conversation advises the Tenant to keep the note for evidence if something happens.
22. As for the Tenant-agent-Landlord relationship, the Landlord testified that the Tenant is correct, his agent's name is Thomas Ekanayaka, who is his 70-year-old father, and both he and his agent had tried to negotiate with the Tenant several times. He noted there was no intention to confuse the Tenant and the agent was clear about his roles and responsibilities.
23. The Landlord alleged throughout these interactions the Tenant was angry and used harsh and threatening language.
24. The Landlord testified that monthly text messages were sent to the Tenant from the Landlord's agent reminding the Tenant rent was due and negotiating a time to repay. These text messages were submitted into evidence. One text message included a response from the Tenant threatening the Landlord to take him to the Landlord Tenant Board.
25. The Landlord further testified he followed up with monthly phone calls, beginning in March 2022 only to get the answering service. In each case, the Landlord testified he left voice messages requesting payment of rent and negotiating a repayment date; however, received no response.
26. I do not find the actions of the Landlord, or the Landlord's agent in pursuing payment of rent or attempting to negotiate a repayment of rent amount to harassment. Not do I find that the Landlord or the Landlord's agent gave the Tenant any communication containing inappropriate or insulting language. In fact, the Landlord's agent appeared helpful as per the text message conversations. Lastly, I do not find the service of an N12 rises to the

level of harassment, as the Act permits a landlord to file a notice of termination in certain circumstances. Therefore, on the evidence before me, I am not satisfied that the Tenant has proved any harassment by the Landlord or his agent.

Relief from eviction

27. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
28. The Tenant testified that due to the harassment he has suffered his eviction should be denied. However, has already worked with his Ontario Works caseworker who will assist in searching for a new place. He further testified he would need until the end of December to find a suitable new living arrangement.
29. The Landlord testified he is a small Landlord, the arrears are significant, has attempted to negotiate multiple times with the Tenant, to which he has received either a rude response or no response at all and therefore does not see any reason why the eviction should be delayed or denied.
30. I have reviewed the evidence and find the harassment allegations are not substantiated and therefore should not impact relief from eviction. Further, the Tenant presented no evidence substantiating the need for a delay of the eviction; in fact, it appears there are staff from Ontario Works who are assisting him with the rental housing search process. Therefore, I see no reason why the eviction should be delayed or denied.

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:**
 - \$6,186.00 if the payment is made on or before December 18, 2022. 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 December 18, 2022 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 December 18, 2022**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$3,884.72. 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 \$16.44 per day for the use of the unit starting September 14, 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 December 18, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 19, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 18, 2022, then starting December 19, 2022, 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 December 19, 2022.

December 7, 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 June 19, 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 18, 2022

Rent Owing To December 31, 2022	\$6,000.00
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	\$6,186.00

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

Rent Owing To Hearing Date	\$4,213.72
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	- \$500.00
Less the amount of the interest on the last month's rent deposit	- \$15.00
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 amount owing to the Landlord	\$3,884.72
Plus daily compensation owing for each day of occupation starting September 14, 2022	\$16.44 (per day)