



Order under Section 69 Residential Tenancies Act, 2006

Citation: 35 Cedarcroft Boulevard Ltd. v Emano, 2022 ONLTB 13445

Date: 2022-11-30

File Number: LTB-L-022136-22

In the matter of: 205, 35 CEDARCROFT BLVD
NORTH YORK ON M2R2Z4

Between:	35 Cedarcroft Boulevard Ltd.	Landlord
	and	
	Erwin Emano Jenna Emano	Tenants

2022 ONLTB 13445 (CanLII)

35 Cedarcroft Boulevard Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Erwin Emano and Jenna Emano (the 'Tenants' or 'E.E.' and 'J.E.') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on November 7, 2022.

The Landlord did not attend the hearing but was represented by Richard Hissey. The Tenants did not attend the hearing but were represented by Dena Oberman.

PRELIMINARY MATTERS

1. The Tenants legal representative raised one preliminary issue. A request was made to adjourn the hearing. This request was denied.
2. The Tenants legal representative sought an adjournment so that her client could have more time to collect documentation verifying payments made towards the arrears. The Landlord's representative objected to this request asserting the prejudicial effect further delays would have on the growing arrears balance.
3. This application was filed on April 19, 2022. I am not satisfied that the Tenants were unable to reasonably obtain and disclose their intended evidence as required by Rule 19. Moreover, granting an adjournment would prejudice the Landlord by further delaying the hearing of this matter, particularly given the amount of arrears alleged. Finally, I consider the Board's obligation to adjudicate matters expeditiously. For these reasons the request was denied.
4. At the end of the hearing I ordered the Tenants' legal representative to submit medical documentation pertaining to J.E.'s disability related status as a post-hearing submission. On November 16, 2022, a number of medical documents were submitted which were reviewed and considered in my reasons that follow.

Determinations:

5. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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.
6. As of the hearing date, the Tenants were still in possession of the rental unit.
7. The lawful rent is \$1,672.06. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$54.97. This amount is calculated as follows: \$1,672.06 x 12, divided by 365 days.
9. The Tenants have paid \$5,500.00 to the Landlord since the application was filed.
10. The rent arrears owing to November 30, 2022 are \$14,117.86.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$1,652.24 from the Tenants 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.

Section 83 considerations

13. The Landlord's legal representative stated that although there are significant arrears, it was his view that as the Landlord is a large corporate landlord, any delays granting an eviction would not have a significant financial impact on them. However, the Landlord would like the application resolved in some way. In response to questioning from the Board pertaining to attempts made by the Landlord to enter into payment arrangements and the impact of COVID-19, the legal representative was unaware of the efforts made by the Landlord to enter into a payment arrangement with the Tenants but directed the Board to a letter sent from his office dated October 11, 2022 which involved a payment proposal made to the Tenants. He was also unaware of how the COVID-19 pandemic affected the Landlord.
14. The Tenants' legal representative was retained on October 21, 2022 and had limited knowledge of the Tenants' circumstances, however, informed the Board that J.E. was involved in a motor vehicle accident, had an open accident benefits claim, and was receiving non-earner benefits of \$800.00 weekly that are applied to benefits received through Ontario Works. She was not aware of the specific amount of benefits being received by J.E. or other sources of income the Tenants had available to them. A review of the medical documentation supplied as post-hearing submissions indicates that the J.E. acquired a mental health related disability following her involvement in a motor vehicle accident on August 14, 2021.
15. 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

Tenants and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

16. I am satisfied, given the impact J.E.'s mental health related disability has on her ability to work and earn a sustainable income, that the Tenants fell into arrears and, given more time, would be able to address the outstanding balance using the benefits they are receiving. I also considered the significant impact an eviction would have on J.E. given her vulnerable mental health status. I am satisfied that any further prejudice to the Landlord may be mitigated by attaching a s. 78 clause to the requirements that the Tenants adhere to the payment plan and also pay their rent on time.

It is ordered that:

1. The Tenants shall pay to the Landlord \$14,303.86, which represents the arrears of rent (\$14,117.86) and costs (\$186.00) outstanding for the period ending November 30, 2022.
2. The Landlord's application for eviction of the Tenants is denied on the condition that:
 - (a) The Tenants shall make the following payments to the Landlord in respect of the monies owing under paragraph 1 of this order:
 1. The Tenants shall pay to the Landlord \$400.00 per month on or before the 15th day of each month during the period of December 15, 2022, to October 15, 2025; and
 2. The Tenants shall pay \$303.86 on or before November 15, 2025.
 - (b) The Tenants shall also pay the Landlord the lawful monthly rent as it becomes due on or before the 1st day of the month starting January 1, 2023 until the arrears are paid in full.
 - (c) The Tenants shall pay the rent due for December 2022 on or before December 15, 2022, if not already paid.
3. If the Tenants fail to make any of the payments in accordance with paragraph 2, and by the dates required, then:
 - (a) The Landlord may, without notice to the Tenants, apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenants, and for the payment of any new arrears of rent and NSF charges not already ordered under paragraph 1 of this order. The Landlord must make the application within 30 days of a breach of a condition set out in paragraph 2 of this order.

(b) The balance owing under paragraph 1 of this order shall become payable on the day following the date of default. The monies shall bear interest at the post-judgement interest rate determined under subsection 207(7) of the Act.

November 30, 2022
Date Issued

Emile Ramlochan
Member, Landlord and Tenant Board

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