



Order under Section 69
Residential Tenancies Act, 2006

Citation: King Edward Apartments v Campbell, 2022 ONLTB 12980

Date: 2022-11-25

File Number: LTB-L-031010-22

In the matter of: 16, 90 King Edward Avenue
London Ontario N5Z3S8

Between: King Edward Apartments Landlord

And

Jonathan Campbell Tenant

King Edward Apartments (the 'Landlord') applied for an order to terminate the tenancy and evict Jonathan Campbell (the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes (L1 Application); and
- the Tenant has been persistently late in paying the Tenant's rent; (L2 Application).

This application was heard by videoconference on July 28, 2022.

Only the Landlord attended the hearing.

As of 11:01AM, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the Board. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

L1 Application – Non-Payment of Rent

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 \$860.20. It is due on the 1 day of each month.
4. Based on the rent, the daily rent/compensation is \$28.28. This amount is calculated as follows: \$860.20 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 July 31, 2022 are \$5,696.40.

7. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$865.63 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. Interest on the rent deposit, in the amount of \$14.66 is owing to the Tenant for the period from March 1, 2020 to July 28, 2022.

L2 Application – Persistent Late Payment of Rent

10. The Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the 1st day of each month .
11. The Landlord's application was filed in October 2021. The rent has been paid late 10 times in the past 10 months. For 9 out of the 10 months leading up to the filing of the Landlords' application, rent has been paid late or not paid in full in each of those months.
12. I find on the basis of the uncontested testimony of the Landlord and my review of the Landlord's bank statement (Exhibit 1, being page 24 of the Landlord's compendium of documents filed with the Board), which confirms the information set out in the Landlord's N8 notice of termination, that the Tenants have persistently failed to pay the rent on the date it was due.
13. The Landlord's uncontested testimony and documentary evidence of the account payment ledger and rent arrears payment agreement letters dated November 05, 2021, December 03, 2021, January 06, 2022, and June 06, 2022, establishes that the Tenant has persistently failed to pay the rent on the date it was due. The evidence confirms the information in the Landlord's N8 notice of termination.

No Relief from Eviction

14. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

L1 Application – Non-Payment of Rent

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 Board in trust:**
 - **\$9,507.88** if the payment is made on or before December 6, 2022. See Schedule 1 for the calculation of the amount owing.

3. The Tenant may also make a motion at the Board 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 6, 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 6, 2022.**
5. If the Tenant does not void the order, the Tenant owes the Landlord \$5,017.11. This amount includes rent arrears owing up to the date of the hearing. 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 \$28.28 per day for the use of the unit starting August 01, 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 6, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 7, 2022 at 2.00% annually on the balance outstanding.
10. If the unit is not vacated on or before December 6, 2022, then starting December 7, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
11. 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 7, 2022.

L2 Application – Persistent Late Payment of Rent

12. If the Tenant voids the L1 portion of the order in accordance with paragraph two above, the tenancy shall continue, and the Tenant shall pay lawful monthly rent as it comes due in full and no later than the first day of each month commencing January 2023 through to February 2024.
13. If the Tenant fails to make any of the payments in paragraph 13 above, the Landlord may apply under section 78 of the Act, within 30 days of the breach and without notice to the Tenant, for an order terminating the tenancy and evicting the Tenant.

November 25, 2022

Date Issued

Percy Laryea

Member, Landlord and Tenant Board

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 of the Tenant expires on June 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.

*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 after but on or before December 6, 2022

Rent Owing To December 6, 2022	\$9,306.88
Application Filing Fee	\$ 201.00
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 Board 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	\$9,507.88

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

Rent Owing To July 28, 2022	\$5,696.40
Application Filing Fee	\$ 201.00
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 Board since the application was filed	- \$ 0.00
Less the amount of the last month's rent deposit	- \$ 865.63
Less the amount of the interest on the last month's rent deposit	- \$ 14.66
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	\$5,017.11
Plus daily compensation owing for each day of occupation starting Aug 01, 2022:	\$28,28 (per day)

