



Order under Section 69 Residential Tenancies Act, 2006

Citation: Rate v Kelly, 2022 ONLTB 12417

Date: 2022-11-21

File Number: LTB-L-013102-22-RV

In the matter of: 81 PRINCESS ST
STRATHROY ON N7G2S1

Between: William Rate Landlord

And

Peggy Kelly Tenant

2022 ONLTB 12417 (CanLII)

REVIEW ORDER

William Rate (the 'Landlord') applied for an order to terminate the tenancy and evict Peggy Kelly (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-013102-22 issued October 17, 2022.

On October 19, 2022, the Landlord requested a review of the order.

On October 24, 2022, interim review order was issued.

The review was heard by videoconference on November 10, 2022.

The Landlord, the Landlord's Legal Representative Wendy Cavacas, the Landlord's witness Khená Andrews, the Landlord's witness Renene Lightfoot and the Tenant attended the hearing.

Determinations:

1. The Landlord's request for review is based on the grounds of not reasonably being able to participate in the hearing which took place on September 13, 2022.
2. The Landlord stated that he first became aware of the hearing when he received an email communication from the Board on October 17, 2022 stating that the hearing had taken place and that the matter had been dismissed.
3. The Landlord testified that he is 76 years old, has limited knowledge regarding computers and requires assistance from his family members for technology use. During the month of August, 2022, the Landlord was quite ill and was in and out of the hospital approximately two to three times per week. The Landlord submits that he was in great pain during that period of time.

4. The Board sent an email to the Landlord on August 16, 2022 enclosing the notice of hearing but the Landlord states he never accessed this email or knew that a hearing had been scheduled.
5. The Landlord had two witnesses, his granddaughter and his daughter, both testify that the Landlord was hospitalized a large portion of the time in August, 2022, in great pain, not physically capable of answering his phone and that his granddaughter might have mistakenly deleted the email communication from the Board regarding the notice of hearing.
6. The Tenant submitted that she was unaware the Landlord was having medical issues and hospitalized but states that the Landlord still should have been able to check his emails several times a week.
7. In *King-Winton v. Doverhold Investments Ltd.*, 2008 CanLII 60708, the Divisional Court held that “being reasonably able to participate in the proceeding must be interpreted broadly, natural justice requires no less.
8. Interpreting this situation broadly, I find on a balance of probabilities, that the Landlord was not reasonably able to participate in the proceedings. While I can appreciate that the Notice of Hearing package was sent to the Landlord, I am satisfied that he did not view it, due to technical issues and his serious health issues he was experiencing at the time.
9. Given the evidence and submissions at the hearing, I granted the request for the review. A hearing of the Landlord’s application proceeded *de novo* (anew).

L1 application:

10. 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.
11. As of the hearing date, the Tenant was still in possession of the rental unit.
12. The lawful rent is \$1,200.00. It is due on the 1st day of each month.
13. Based on the monthly rent, the daily rent/compensation is \$39.45. This amount is calculated as follows: \$1,200.00 x 12, divided by 365 days.
14. The Tenant has not made any payments since the application was filed.
15. The rent arrears owing to November 30, 2022 are \$19,200.00. The Tenant does not dispute the rent arrears owing.
16. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
17. The Landlord collected a rent deposit of \$600.00 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.

18. Interest on the rent deposit, in the amount of \$12.17 is owing to the Tenant for the period from March 4, 2021 to November 10, 2022.
19. The Landlord requests a standard eviction order. He states that he is 76 years old, on a fixed income and is now financially drained as a result of the Tenant not paying her rent.
20. While not disputing the amount of the rent arrears, the Tenant requested an additional two to three months to move out of the rental unit. It was noted that the Tenant has not paid any rent whatsoever to the Landlord since August, 2021 and has two adult children living with her. The Tenant stated that she decided to just stop paying rent to the Landlord as she believed he was taking things off the property. The Tenant also submitted that she has been looking for alternative places to move to for approximately a year.
21. Given the evidence and submissions at the hearing, 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.
22. This order contains all of the reasons for this matter and no further reasons will be issued.

It is ordered that:

1. The request to review order LTB-L-013102-22 issued October 17, 2022 is granted. Order LTB-L-013102-22 issued October 17, 2022 is cancelled and replaced with the following order.
2. Interim order LTB-L-013102-22 issued on October 24, 2022 is cancelled.
3. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
4. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$19,386.00 if the payment is made on or before November 30, 2022. See Schedule 1 for the calculation of the amount owing.

OR

 - \$20,586.00 if the payment is made on or before December 2, 2022. See Schedule 1 for the calculation of the amount owing.
5. 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 2, 2022 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
6. **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 2, 2022.**
7. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$17,968.33. 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.

8. The Tenant shall also pay the Landlord compensation of \$39.45 per day for the use of the unit starting November 11, 2022 until the date the Tenant moves out of the unit.
9. If the Tenant does not pay the Landlord the full amount owing on or before December 2, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 3, 2022 at 4.00% annually on the balance outstanding.
10. If the unit is not vacated on or before December 2, 2022, then starting December 3, 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 3, 2022.

November 21, 2022
Date Issued

Heather Chapple
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 3, 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 November 30, 2022

Rent Owing To November 30, 2022	\$19,200.00
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	\$19,386.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 2, 2022

Rent Owing To December 31, 2022	\$20,400.00
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	\$20,586.00

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

Rent Owing To Hearing Date	\$18,394.50
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	- \$600.00
Less the amount of the interest on the last month's rent deposit	- \$12.17
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	\$17,968.33
Plus daily compensation owing for each day of occupation starting November 11, 2022	\$39.45 (per day)