



Order under Section 69 Residential Tenancies Act, 2006

Citation: NJS Queen-College Inc. v Taylor, 2022 ONLTB 11713

Date: 2022-11-14

File Number: LTB-L-006062-22

In the matter of: 10, 34 HEYDON PARK RD
TORONTO ON M6J2C8

Between: NJS Queen-College Ltd. Landlord
Partnership c/o Berkley Property
Management

And

Kevon Taylor Tenant

NJS Queen-College Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Kevon Taylor (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

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

The Landlord and the Tenant attended the hearing. The Landlord was represented by Bryan Rubin who was accompanied by personal representatives of the Landlord, Matthew Teich and Krista Taylor. The Tenant declined the opportunity to consult with Tenant Duty Counsel.

Determinations:

PRELIMINARY ISSUES

1. There are two issues here of a preliminary or procedural nature: should the Tenant be permitted to raise his own issues pursuant to section 82 of the Act; and should Board costs be awarded against the Tenant for the adjournment granted to him on August 15, 2022 and for his failure to comply with the Board's order issued September 8, 2020?
2. For the reasons that follow, the Tenant is not permitted to raise issues pursuant to section 82 and shall be ordered to pay Board costs in the amount of \$100.00.

The Section 82 Issue

3. Pursuant to s. 82 of the Act a tenant is entitled to raise at a hearing of a rent arrears application, any claim against the landlord that the tenant could raise in an application to the Board and the Board is to treat that assertion of rights the same way it would if the tenant had filed an application.

4. The difficulty that arises here is that the Tenant is in breach of an interim Board order issued on September 8, 2022. It states at paragraph 5:

Commencing September 1, 2022 and continuing each month thereafter until the Board orders otherwise, the Tenant shall pay to the Landlord \$1,968.34 rent as and when it comes due on the first of the month. If the Tenant does not comply, the Board may refuse to consider the Tenant's evidence and submissions at the return of this application.

5. The Tenant freely acknowledges he is in breach of this order as he failed to pay the rent due on the first of the month for the period September 1, 2022 to November 30, 2022. As he offers no reasonable excuse for this failure, I am exercising my discretion and refusing to consider his section 82 claims. He is welcome to file his own application with the Board to assert those claims. However, I am not prepared to refuse to hear the Tenant's evidence and submissions with respect to the Landlord's application. In this manner the Tenant is minimally prejudiced, and the integrity of the Board's interim order is upheld.

The Costs Issue

6. The Landlord seeks an order for Board costs as against the Tenant.
7. At the hearing held on August 15, 2022 the Tenant sought and obtained an adjournment on the basis that he had inadequate time to prepare for the hearing. By way of the same interim order issued on September 8, 2022, both party and Board costs of the adjournment were reserved to be spoken to.
8. For the reasons that follow I find Board costs in this circumstance are appropriate and order the Tenant to pay to the Board costs in the amount of \$100.00.
9. The Board's Interpretation Guideline #3 on Costs outlines the kind of behaviour that may attract an order for costs. The Guideline says that in the normal course of events the only item of costs that the Board will order is the filing fee for a successful applicant. The policy intent of this statement appears to be that the Board does not want the fear of costs awards to deter landlords and tenants from turning to the Board for resolution of their disputes.
10. The Guideline provides examples of situations where Board costs may be appropriate. Essentially the question is: has the Tenant behaved in an unreasonable manner in how he dealt with this application in his behaviour before the Board. An unreasonable manner is where a party consciously makes choices that unnecessarily delay the proceeding or otherwise frustrate the hearing process.
11. Here, the Tenant asked for an adjournment on August 15, 2022, which appears to have been a request made in bad faith. His request for adjournment was based on having inadequate time to prepare and a stated intention of seeking representation. In fact, he had more than sufficient time to prepare as the record before the Board suggests he received the Notice of Hearing for August 15, 2022 on or before July 13, 2022. At the hearing before me, the Tenant did not refute that. He also had no evidence or submissions to offer as to

whether or not he actually contacted a representative. In other words, the only conclusion available to the Board is that the Tenant asked for an adjournment to delay the proceedings without a justifiable reason, and in doing so wasted a considerable amount of Board time.

12. Pursuant to Rule 23.4 the Board may order Board costs in the amount of \$100.00 per hour up to a maximum of \$700.00. Here, the Tenant's behaviour result in the unnecessary hearing before me on November 7, 2022. As I spent less than an hour hearing this matter, I believe the appropriate amount for Board costs as against the Tenant would be \$100.00. An order will issue accordingly.

THE L1 APPLICATION

13. 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.
14. As of the hearing date, the Tenant was still in possession of the rental unit.
15. The lawful rent is \$1,945.00. It is due on the 1st day of each month.
16. Based on the Monthly rent, the daily rent/compensation is \$63.95. This amount is calculated as follows: $\$1,945.00 \times 12$, divided by 365 days.
17. The Tenant has not made any payments since the application was filed.
18. The rent arrears owing to November 30, 2022 are \$23,340.00. Initially the Tenant disagreed that this is the amount owing but then changed his mind and agreed this amount is correct.
19. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
20. The Landlord collected a rent deposit of \$1,945.00 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.
21. Interest on the rent deposit, in the amount of \$39.71 is owing to the Tenant for the period from February 25, 2021 to November 7, 2022.

Section 83 Considerations

22. The Landlord seeks a standard voidable eviction order. The Tenant asks for relief in the form of delay of the eviction until November 30, 2022.

23. The Tenant says he needs additional time to prepare for the move. The Tenant says he can stay with a friend but his children are in his care on weekends so if he has not found a more permanent home by the eviction date, he and his children will have no where to go.
24. The problem with the Tenant's request for relief is that he comes before the Board without clean hands and has willfully put himself in this position. He admits to failing to even read the Board's interim order of September 8, 2022. Further, he has made no payments to the Landlord at all since December of 2021. In other words, the Tenant had more than ample time to find alternative housing and should have sufficient means to move.
25. Therefore, having considered all of the disclosed circumstances in accordance with subsection 83(2) the Act, I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Board's standard eleven-day order shall issue.
26. This order contains all of the reasons for the decision in it. No further reasons shall be issued.

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:**
 - \$23,526.00 if the payment is made on or before November 25, 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 November 25, 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 November 25, 2022**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$20,043.94. 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 \$63.95 per day for the use of the unit starting November 8, 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 November 25, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 26, 2022 at 3.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 25, 2022, then starting November 26, 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 November 26, 2022.
10. On or before November 25, 2022, the Tenant shall pay to the Board \$200.00 for cost of the adjourned hearing and failing to comply with the Interim Order.

November 14, 2022

Date Issued

Dana Wren

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 May 26, 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.

Payment of the Board costs must be made to the Board by the deadline set out above. The costs can be paid by certified cheque, bank draft or money order made payable to the Minister of Finance. If paying in person, the debt can also be paid by cash, credit card or debit card.

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 25, 2022

Rent Owing To November 30, 2022	\$23,340.00
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	- \$
Total the Tenant must pay to continue the tenancy	\$23,526.00

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

Rent Owing To Hearing Date	\$21,842.65
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	- \$1,945.00
Less the amount of the interest on the last month's rent deposit	- \$39.71
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	\$20,043.94
Plus daily compensation owing for each day of occupation starting November 8, 2022	\$63.95 (per day)