



Order under Section 69 Residential Tenancies Act, 2006

Citation: Perron v Heffernan, 2022 ONLTB 11408

Date: 2022-11-10

File Number: LTB-L-020528-22

In the matter of: 63 BILLINGS AVE
TORONTO ON M4L2S3

Between: Joel Perron Landlord

And

Sean Heffernan Tenant

Joel Perron (the 'Landlord') applied for an order to terminate the tenancy and evict Sean Heffernan (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 26, 2022.

Only the Landlord attended the hearing.

As of 10:37a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

Service of the Notice of Termination

1. The Landlord served the Tenant with an N4 Notice to End Tenancy Early for Non-payment of Rent (N4 Notice) by email on March 14, 2022. Service by email is not an accepted method of service by section 191 of the *Residential Tenancies Act* ('the Act') or the Boards Rules of Practice, Rule 3.
2. The Landlord testified, supported by an email chain that was entered into evidence, that the Tenant replied to the email in which he was sent the N4 Notice. In that reply email the Tenant says he understands, asks the Landlord if he wants him to find another place to live, and says he is embarrassed.
3. Sub-section 191 (2) of the Act states, a notice or document that is not given in accordance with this section shall be deemed to have been validly given if it is proven that its contents actually came to the attention of the person for whom it was intended within the required time period.

4. The Landlord and Tenant's email chain satisfies me that the N4 Notice was received by the Tenant and as such it was lawful service.

The Application

5. 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.
6. As of the hearing date, the Tenant was still in possession of the rental unit.
7. The lawful rent is \$1,500.00. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$49.32. This amount is calculated as follows: \$1,500.00 x 12, divided by 365 days.
9. The Tenant has not made any payments since the application was filed.
10. The rent arrears owing to October 31, 2022 are \$12,000.00. The Landlord indicated that the rent arrears are only \$10,500.00 because he already subtracted the last month's rent deposit. However, a last month's rent deposit should only be applied to the last month of a tenancy and therefore it will be subtracted from the total amount of outstanding arrears if the tenancy is terminated.
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 \$1,500.00 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.
13. Interest on the rent deposit, in the amount of \$12.72 is owing to the Tenant for the period from February 16, 2022 to October 26, 2022.
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. Additionally, the Tenant did not attend the hearing to provide any evidence relevant to my analysis under section 83 of the Act.

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:**
 - \$13,686.00 if the payment is made on or before November 21, 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 21, 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 21, 2022.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$10,455.60. 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 \$49.32 per day for the use of the unit starting October 27, 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 21, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 22, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 21, 2022, then starting November 22, 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 22, 2022.

November 10, 2022
Date Issued

Amanda Kovats
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 22, 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 21, 2022

Rent Owing To November 30, 2022	\$13,500.00
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
Total the Tenant must pay to continue the tenancy	\$13,686.00

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

Rent Owing To Hearing Date	\$11,782.32
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	- \$1,500.00
Less the amount of the interest on the last month's rent deposit	- \$12.72
Total amount owing to the Landlord	\$10,455.60
Plus daily compensation owing for each day of occupation starting October 27, 2022	\$49.32 (per day)