



Order under Section 69 Residential Tenancies Act, 2006

Citation: 5754 Yonge Street v MacNeil, 2022 ONLTB 9837

Date: 2022-11-02

File Number: LTB-L-047447-22

In the matter of: 1008, 5754 Yonge Street
Toronto Ontario M2M3T6

Between: 5754 Yonge Street Landlord

And

Darren MacNeil Tenant

5754 Yonge Street (the 'Landlord') applied for an order to terminate the tenancy and evict Darren MacNeil (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on October 12, 2022. The Landlord's agent, David Lipkin, attended the hearing. As of 11:25 am, 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:

1. The Landlord served the Tenant with a valid Notice to End the 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 \$1,921.90. It is due on the 1st day of each month. The rent increased from \$1,825.00 to \$1,900.00 effective May 1, 2022 as a result of the Tenant's request for an outdoor parking spot. The rent of \$1,900.00 increased to the current rent on July 1, 2022 as a result of a guideline rent increase.
4. Based on the monthly rent, the daily rent/compensation is \$63.19. This amount is calculated as follows: \$1,921.90 x 12, divided by 365 days.
5. The Tenant has paid \$6,875.00 to the Landlord since the application was filed.
6. The rent arrears owing to October 31, 2022 are \$11,882.62.
7. The Landlord is entitled to \$20.00 to reimburse the Landlord for administration charges and \$5.00 for bank fees the Landlord incurred as a result of 1 cheque given by or on behalf of the Tenant, dated February 11, 2022, which was returned NSF.

8. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$1,825.00 from the Tenant on July 3, 2021, and this deposit was increased to \$1900.00 on May 1 2022. 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.
10. Interest on the rent deposit, in the amount of \$28.43 is owing to the Tenant for the period from July 3, 2021 to October 12, 2022.
11. The Landlord's agent testified that the Landlord proposed an arrears repayment plan to the Tenant on January 10, 2022, and the Tenant responded that he would pay the arrears according to the plan; however, the Tenant did not make any payments. The agent testified further that he tried to contact the Tenant on a monthly basis regarding the repayment plan, but the Tenant never made any payments according to the plan.
12. 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.
13. The Landlord's agent was not aware of any circumstances that should be considered in a determination of whether to provide the Tenant with eviction relief, nor was the Tenant or their representative present at the hearing to provide submissions with respect to the Tenant's relief from eviction. For these reasons, it would be unfair to the Landlord to grant the Tenant with eviction relief.

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:**
 - \$14,030.32 if the payment is made on or before November 13, 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 13, 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 13, 2022.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$9,016.57. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. 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 \$63.19 per day for the use of the unit starting October 13, 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 13, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 14, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 13, 2022, then starting November 14, 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 14, 2022.

2022 ONL TB 9837 (CanLII)

November 2, 2022

Date Issued

Frank Ebner

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 14, 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 13, 2022

Rent Owing To November 30, 2022	\$20,679.52
Application Filing Fee	\$201.00
NSF Charges	\$25.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,875.00
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	\$14,030.52

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

Rent Owing To Hearing Date	\$17,594.00
Application Filing Fee	\$201.00
NSF Charges	\$25.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,875.00
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	- \$1,900.00
Less the amount of the interest on the last month's rent deposit	- \$28.43
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	\$9,016.57
Plus daily compensation owing for each day of occupation starting October 13, 2022	\$63.19 (per day)