



Order under Section 69 Residential Tenancies Act, 2006

Citation: 255 Metcalfe Street Inc. v Atkins, 2022 ONLTB 9669

Date: 2022-10-28

File Number: LTB-L-001860-21

In the matter of: 42, 255 METCALFE ST
OTTAWA ON K2P1R4

Between: 255 Metcalfe Street Inc.

Landlord

And

Stuart Atkins

Tenant

255 Metcalfe Street Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Stuart Atkins (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 22, 2022.

The Landlord Agent Delia Pagliaro, the Landlord's representative Arashdeep Grewal(AG), and the Tenant attended the hearing.

Determinations:

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 \$915.32. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$30.09. This amount is calculated as follows: \$915.32 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 June 30, 2022 are \$6,335.75. The Tenant did not dispute the amount of arrears and stated that he had withheld rent due to maintenance issues at the rental unit.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.
9. The Tenant alleges harassment by the Landlord because the Landlord instituted a no-cash payment policy when they took over on September 01, 2020. The Tenant testified that his

original lease with the previous Landlord provided him with the cash payment option, and he will only pay rent through that option. The Tenant testified that the Landlord rejected his rent, a cash payment in December 2021.

10. The Landlord provided detailed oral evidence regarding their discussions with the Tenant regarding the arrears and how rent payments could be made through bank drafts, personal cheques, and e-transfers. I do not find that the Landlord harassed the Tenant because it would not accept cash or prevented the Tenant from paying the lawful rent.
11. The Tenant also requested to raise a number of issues pursuant to section 82 of the Residential Tenancies Act, 2006 (the 'Act'). AG objected to this request arguing that the Tenant did not notify the Landlord of his intention to raise these issues and that they did not know what the issues were or what relief the Tenant would be seeking.
12. Section 82 of the Act provides that at a rent arrears hearing the Board shall permit the Tenant to raise any issue that could be the subject of an application made by the tenant if the tenant provides the landlord and the Board with advance disclosure of the issue and the evidence in accordance with the Board's rules or provides an explanation satisfactory to the Board explaining why the tenant could not comply with the disclosure requirements.
13. Rule 19.4 of the Rules of Procedure of the Landlord and Tenant Board states:

“Unless the LTB directed or ordered otherwise, a tenant who intends to raise issues under sections 82(1) or 87(2) of the RTA during an application about rent arrears shall provide the other parties and the LTB the following at least 7 days before the scheduled CMH or hearing: 1. A written description of each issue the tenant intends to raise; and ...”

14. The Tenant did not explain why he did not provide the Landlords with any details about the maintenance issues he intended to raise at the hearing other than that he needed more time to do so. The evidence the Tenant wanted to rely upon was fairly extensive, and I do not find that the Landlords could have a fair hearing without knowing the case against them. Therefore, I cannot consider the Tenant's section 82 issues, but he may file his own application to have these concerns considered by the Board.
15. 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.

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:**

- \$10,183.03 if the payment is made on or before October 31, 2022. See Schedule 1 for the calculation of the amount owing.

OR

- \$11,098.35 if the payment is made on or before November 8, 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 8, 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 8, 2022**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$6,268.41. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
 6. The Tenant shall also pay the Landlord compensation of \$29.10 per day for the use of the unit starting June 23, 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 8, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 9, 2022 at 2.00% annually on the balance outstanding.
 8. If the unit is not vacated on or before November 8, 2022, then starting November 9, 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 9, 2022.

October 28, 2022

Date Issued

Percy Laryea

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 9, 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 on or before October 31, 2022

Rent Owing To October 31, 2022	\$9,997.03
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	\$10,183.03

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before November 8, 2022

Rent Owing To November 30, 2022	\$10,912.35
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	\$11,098.35

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

Rent Owing To Hearing Date	\$6,082.41
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	- \$
Less the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord	\$6,268.41
Plus daily compensation owing for each day of occupation starting June 23, 2022	\$29.10 (per day)