



Order under Section 69
Residential Tenancies Act, 2006

Citation: Patel v Weatherhead, 2022 ONLTB 10409

Date: 2022-10-27

File Number: LTB-L-005749-22

In the matter of: 127 LINKS CR
WOODSTOCK, ONTARIO ON N4T0E7

Between: Mitul Patel Landlord

And

Jennifer Weatherhead Tenant

Mitul Patel (the 'Landlord') applied for an order to terminate the tenancy and evict Jennifer Weatherhead (the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes (L1 Application); and
- the Tenant has been persistently late in paying the Tenant's rent; (L2 Application).

This application was heard by videoconference on October 20, 2022. The Landlord and the Landlord's Legal Representative Elizabeth Anani attended the hearing. As of 10:31a.m, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the Board. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

L1 Application – Non-Payment of Rent

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 \$1,740.00. It is due on the 1 day of each month.
4. Based on the monthly rent, the daily rent/compensation is \$57.21. This amount is calculated as follows: \$1,740.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears and compensation owing to October 31, 2022 are \$38,280.00.

7. The Landlord indicated they wanted to proceed with the hearing of the application and voluntarily waived the portion of the claim that exceeds the Board's monetary jurisdiction of \$35,000.00 for the period ending October 31, 2022.
8. There is no last month's rent deposit.

L2 Application – Persistent Late Payment of Rent

9. The Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the first day of each month. Since January 2021 and up to the date of the hearing, the Tenant has not paid anything towards the monthly rent. The Landlord submits that the Tenant's non-payment of rent qualifies as being persistently late.
10. I accept the Tenant has failed to any pay amounts towards the monthly rent for 22 months. I find the monthly rent for the period of January 1, 2021 to October 31, 2022 was persistently late as it was unpaid.

Relief from Eviction

11. I find that the Landlord fulfilled its duties to attempt resolution of the application during the COVID-19 pandemic pursuant to subsection 83(6) of the *Residential Tenancies Act, 2006* (the 'Act'). The Landlord submits the Tenant's possessions are still at the rental unit but the Tenant has not been present when the Landlord attended at the rental unit. The Landlord stated he has been unable to communicate with the Tenant regarding the rent arrears and stated the Tenant has been unresponsive to the Landlord.
12. 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 not be unfair to grant relief from eviction pursuant to subsection 83(1)(a) of the Act. The Tenant has not made any payments towards the monthly rent for the past 22 months. The rent arrears are significant and the total amount exceeds the Board's jurisdiction.

It is ordered that:

L1 Application – Non-Payment of Rent

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 Board in trust:**
 - \$35,000.00 (maximum award under Board's jurisdiction) if the payment is made on or before November 7, 2022. See Schedule 1 for the calculation of the amount owing.

3. The Tenant may also make a motion at the Board to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered 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 7, 2022.**
5. If the Tenant does not pay the Landlord the full amount owing on or before November 7, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 8, 2022 at 4.00% annually on the balance outstanding.
6. If the unit is not vacated on or before November 7, 2022 , then starting November 8, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. 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 8, 2022.

L2 Application – Persistent Late Payment of Rent

8. If the Tenant voids the L1 portion of the order in accordance with paragraph two above, the tenancy shall continue on the following terms.
9. The Tenant shall pay the Landlord the monthly rent due on or before the first day of the month for the period November 1, 2022 to October 31, 2023.
10. If the Tenant fails to make any of the payments in paragraph 13 above, the Landlord may apply under section 78 of the Act, within 30 days of the breach and without notice to the Tenant, for an order terminating the tenancy and evicting the Tenant.

October 27, 2022
Parish

Date Issued Kimberly

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 of the Tenant expires on May 8, 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

Rent Owing To October 31, 2022	\$ 38,280.00
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 Board 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	\$35,000.00

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

Rent Owing To Hearing Date	\$ 37,684.20
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 Board since the application was filed	- \$ 0.00
Less the amount of the last month's rent deposit	- \$ 0.00
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	- \$ 0.00
Total amount owing to the Landlord	\$35,000.00