



Order under Section 69 Residential Tenancies Act, 2006

Citation: Reid v Phillips, 2022 ONLTB 8894

Date: 2022-10-20

File Number: LTB-L-013799-22

In the matter of: Basement Unit - 50 Galley Ave
Toronto, ON M6R 1G8

Between: Jeffrey David Reid Landlord

And

Ted Phillips Tenant

Jeffrey David Reid (the 'Landlord') applied for an order to terminate the tenancy and evict Ted Phillips (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on September 13, 2022.

The Landlord 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 \$1,313.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$43.17. This amount is calculated as follows: \$1,313.00 x 12, divided by 365 days.
5. The Tenant has paid \$1,750.00 to the Landlord since the application was filed.
6. The rent arrears owing to September 30, 2022 are \$9,980.00.
7. The Landlord collected a rent deposit of \$1,300.00 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.
8. Interest on the rent deposit, in the amount of \$76.84 is owing to the Tenant for the period of February 16, 2018 to September 13, 2022.
9. The Tenant raised a preliminary issue prior to the hearing. The Tenant submitted that the N4 Notice of Termination should be dismissed on the basis that a rent payment he made in

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February of 2022 was not included in the total arrears. The Tenant submitted into evidence an e-transfer dated February 3, 2022.

10. The Landlord in response outlined that he did receive the February payment however, he had mis-noted in the N4 Notice of Termination that the missing payment was in fact December 2021 and not February 2022 and that the total amount the Tenant was required to pay in order to void the Notice was correct.
11. Section 59(2) of the *Residential Tenancies Act, 2006* (the 'Act') outlines that a Notice of Termination shall set out the amount of rent due and shall specify that a tenant may void the termination of the tenancy by paying the rent due as set out in the notice.
12. As such, I find on a balance of probabilities that the Notice of Termination issued by the Landlord complied with s. 59(2) in that it correctly outlined the amount of rent the Tenant was required to pay in order to void the Notice and the Tenant's motion to dismiss the application is denied.
13. The Tenant testified that due to the COVID-19 pandemic he is experiencing a lot of hardship and has been unable to obtain employment as a result. The Tenant is currently on Ontario Works and is paid \$733.00 a month.
14. The Tenant indicated that he would like to try to make a payment plan until the spring when he could apply for his pension but was unable to suggest a specific amount he would be able to pay.
15. Based on the Tenant's evidence, I am not satisfied that his current income would be able to support any meaningful payment plan and I find that it would be prejudicial to the Landlord to allow the Tenant to remain in the unit until the spring.
16. As such, eviction will be order but will be delayed in order to allow the Tenant to either secure funds to void the order or the find a new unit.
17. 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 postpone the eviction until December 31, 2022 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

18. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
19. **The Tenant may void this order and continue the tenancy by paying to the Landlord:**
 1. \$11,293.00 if the payment is made on or before October 31, 2022. See Schedule 1 for the calculation of the amount owing.

OR

2. \$12,606.00 if the payment is made on or before November 30, 2022. See Schedule 1 for the calculation of the amount owing.

OR

3. \$13,919.00 if the payment is made on or before December 31, 2022. See Schedule 1 for the calculation of the amount owing.
20. 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 December 31, 2022 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
21. **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 December 31, 2022.**
22. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$7,851.37. 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.
23. The Tenant shall also pay the Landlord compensation of \$43.17 per day for the use of the unit starting September 14, 2022 until the date the Tenant moves out of the unit.
24. If the Tenant does not pay the Landlord the full amount owing on or before October 31, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 1, 2022 at 4.00% annually on the balance outstanding.
25. If the unit is not vacated on or before December 31, 2022, then starting January 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
26. 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 January 1, 2023.

October 20, 2022
Date Issued

Jagger Benham
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 July 1, 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 October 31, 2022

Rent Owing To October 31, 2022	\$13,043.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,750.00
Total the Tenant must pay to continue the tenancy	\$11,293.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before November 30, 2022

Rent Owing To November 30, 2022	\$14,356.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,750.00
Total the Tenant must pay to continue the tenancy	\$12,606.00

C. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 31, 2022

Rent Owing To December 31, 2022	\$15,669.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,750.00
Total the Tenant must pay to continue the tenancy	\$13,919.00

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

Rent Owing To Hearing Date	\$10,978.21
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,750.00
Less the amount of the last month's rent deposit	- \$1,300.00
Less the amount of the interest on the last month's rent deposit	- \$76.84
Total amount owing to the Landlord	\$7,851.37
Plus daily compensation owing for each day of occupation starting September 14, 2022	\$43.17 (per day)

