



I hereby certify this is a true copy of an Order dated
May 8, 2024
CMD
Landlord and Tenant Board

Order under Section 69 Residential Tenancies Act, 2006

Citation: Macpherson v Spoar, 2024 ONLTB 34991

Date: 2024-05-08

File Number: LTB-L-064788-23-HR

In the matter of: 6471 ASH ST
NIAGARA FALLS ON L2G2H4

Between: John Macpherson Landlord

And

Tracy Spoar Tenant

John Macpherson (the 'Landlord') applied for an order to terminate the tenancy and evict Tracy Spoar (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 16, 2024.

The Landlord's Legal Representative, Kelly Hawkes, the Landlord, and the Tenant attended the hearing.

Preliminary Matter:

1. At the beginning of the hearing, the Tenant requested an adjournment as they were under the impression that the hearing had been re-scheduled to May 21, 2024, and the Tenant was unprepared to proceed.
2. The Tenant acknowledged receiving the notice of hearing for the current matter before the Board on August 21, 2023.
3. The Landlord's Legal Representative opposed the request for adjournment citing that there is a hearing scheduled for May 21, 2024, for an L2 application separate from the current L1 application before the Board. The Landlord's Legal Representative advised that the Tenant received separate notices of both hearings which clearly identified the date and purpose of each hearing and that the Tenant was provided with an L1-L9 Information Update by the Landlord's Legal Representative one week prior to the hearing and there was no response from the Tenant. Further, the Landlord's Representative advised that to adjourn this matter would cause significant financial damage to the Landlord given the substantial amount of rental arrears.
4. I find that the notice of both hearings as to the purpose and date was very clear and the Tenant has had five months to prepare for the L1 application before the Board. To adjourn this matter would be prejudicial to the Landlord.

5. The Tenant's request for adjournment is denied.

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 \$2,626.50. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$86.35. This amount is calculated as follows: \$2,626.50 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 January 31, 2024 are \$18,001.50. The Tenant agrees with the rental arrears being claimed by the Landlord.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,600.00 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.
9. Interest on the rent deposit, in the amount of \$191.12 is owing to the Tenant for the period from September 1, 2016 to January 16, 2024.

Relief from eviction

10. 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.
11. The Landlord's Legal Representative sought a standard eviction order. The Landlord's Legal Representative testified that the Tenant has not paid any rent since July 2023 and the Landlord has made numerous attempts (August 1, 2023, September 1, 2023, October 1, 2023, December 8, 2023) to establish a repayment plan for the rental arrears with no response from the Tenant. Further, the Landlord's Legal representative testified that in the past the Tenant had put forward proposed repayment plans however never followed through.
12. The Tenant testified that the rental arrears is due to a series of events that occurred over the past two years. The Tenant testified that there was a marital separation in December 2022 followed by the death of her pet in February 2023 and death of her mother in March 2023. As a result, the Tenant missed work and suffered from depression.

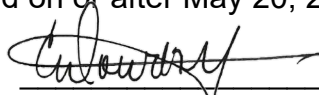
13. The Tenant testified about their monthly income and expenses. Based on the Tenant's testimony, there is a monthly surplus of \$143.50 without considering any form of repayment plan. The Tenant testified that she cannot afford the monthly rent.
14. The Tenant testified that she is committed to repaying the rental arrears and is currently awaiting a settlement from her prior spouse and funds from her mother's estate which is currently in probate. Upon receipt of these funds, the Tenant testified that it is her intention to pay the rental arrears in full. The Tenant did not provide any supporting documentation to confirm either the settlement from her spouse or funds to be forthcoming from her mother's estate. The Tenant further testified that it is also her intention to move out of the Province in the early summer.
15. The position of the Landlord's Legal Representative was that the Tenant has made various promises to pay the arrears in the past with no action and that the Tenant advised the Landlord in July 2023 of the settlements being referenced at the current hearing and now seven months later there has been no further progress. The Landlord's Legal Representative further stated that the Tenant acknowledges that she cannot afford the unit and to deny an eviction would be prejudicial to the Landlord.
16. Although I am sympathetic to the Tenant's situation, I find it would be unfair to deny eviction and order any form of monthly repayment plan. The Tenant's arrears are significant, and the Tenant has not demonstrated they have sufficient income to maintain the current monthly lawful rent. Ordering the Tenant to pay money they do not have would set them up for failure. Further, the Tenant has not demonstrated that there are any settlement funds immediately forthcoming that would repay the rental arrears outstanding.

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:**
 - \$28,693.50 if the payment is made on or before May 19, 2024. 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 May 19, 2024, 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 May 19, 2024.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$15,151.48. 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 \$86.35 per day for the use of the unit starting January 17, 2024, 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 May 20, 2024, the Tenant will start to owe interest. This will be simple interest calculated from May 21, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before May 19, 2024, then starting May 20, 2024, 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 May 20, 2024.

May 9, 2024
Date Issued



Charles Dowdall
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 November 20, 2024 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 May 19, 2024

Rent Owing To May 31, 2024	\$28,507.50
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	\$28,693.50

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

Rent Owing To Hearing Date	\$16,756.60
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	- \$1,600.00
Less the amount of the interest on the last month's rent deposit	- \$191.12
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	\$15,151.48
Plus daily compensation owing for each day of occupation starting January 17, 2024	\$86.35 (per day)