



Order under Section 69 Residential Tenancies Act, 2006

Citation: Hashmi v Spontaneo, 2024 ONLTB 43892

Date: 2024-06-14

File Number: LTB-L-089630-23

In the matter of: 10-8305 McLaughlin Rd.
Brampton, ON L6Y5G3

Between: Aneeq Javed Hashmi

And

Sean Spontaneo



Landlord

Tenant

Aneeq Javed Hashmi (the 'Landlord') applied for an order to terminate the tenancy and evict Sean Spontaneo (the 'Tenant') because the Tenant did not pay the rent owed.

This application was heard by videoconference on April 3, 2024.

The Landlord's representative, Rina Zariqi, the Landlord and the Tenant's representative, Waller Stein attended the hearing.

Despite standing the matter down twice to allow the Tenant's representative to contact his client to join the hearing, as of 5:20 p.m., the Tenant was not in attendance. Mr. Stein submitted that the Tenant claimed he tried to call in to the hearing but was unable to join. I advised the Tenant's representative that the Tenant's claim was unlikely, since three other participants were able to call in and join the hearing room since the matter was stood down at 4:53 p.m.

Preliminary Issue:

Amendment to the Application

1. The Landlord made a clerical error on the application by listing the incorrect Landlord. The correct Landlord was listed on the Landlord's notice of termination. The Landlord's representative requested the application be amended to remove 'Royal York Property Management' and to add Aneeq Javed Hashmi as the Landlord. The Landlord's amendment was granted at 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 \$2,460.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$80.88. This amount is calculated as follows: \$2,460.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The uncontested rent arrears owing to April 30, 2024, are \$25,560.00.
7. Due to an error made by the Landlord when filing the application, the amount of arrears being considered at the hearing was \$6,420.00 less than the amount the Landlord was entitled to. When given the option to adjourn the hearing to correct the L1 application, the Landlord chose to proceed with the lesser arrears amount of \$25,560.00 rather than risk any further delay.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$2,400.00 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.
10. Interest on the rent deposit, in the amount of \$127.73 is owing to the Tenant for the period from February 17, 2022, to April 3, 2024.

Relief from eviction

11. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), which includes the efforts made by the Landlord to arrange payments with the Tenant, the significant amount of the arrears, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
12. The Landlord stated that the Tenant moved into the rental unit in March 2022 and that arrears began to accumulate in April 2023. The Landlord has contacted the Tenant three times to ask for a payment plan, in October 2023, November 2023, and January 2024, with no response from the tenant. He also met with the tenant

in person when he served him with an N5 notice. During this meeting, the Landlord claims the Tenant told him that he owns three vehicles.

13. The Tenant's representative stated that he was recently retained to represent the Tenant and that he only received details on the amount of the rent arrears during mediation prior to the hearing. He indicated the Tenant is the sole income earner and that, due to job loss, he has been unable to pay the rent. He stated that due to the Tenant's financial circumstances, the Tenant would be forced to take the drastic step of filing for insolvency, and he believed the Tenant was doing so imminently. Mr. Stein submitted that the Tenant recently found a job and would be able to pay the lawful rent starting in April 2024. He also expressed the Tenant's intention to make payment arrangements, likely through the insolvency process, to pay down the arrears.

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:**
 - \$30,666.00 if the payment is made on or before June 25, 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 June 25, 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 June 25, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$21,000.91. 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 \$80.88 per day for the use of the unit starting April 4, 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 June 25, 2024, the Tenant will start to owe interest. This will be simple interest calculated from June 26, 2024, at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before June 25, 2024, then starting June 26, 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 June 26, 2024.

June 14, 2024
Date Issued



Ken Audziss
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 December 26, 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 June 25, 2024

Rent Owing to June 30, 2024	\$30,480.00
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 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	\$30,666.00

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

Rent Owing to Hearing Date, April 3, 2024	\$23,342.64
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	- \$2,400.00
Less the amount of the interest on the last month's rent deposit	- \$127.73
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	\$21,000.91
Plus, daily compensation owing for each day of occupation starting April 4, 2024	\$80.88 (per day)