



Order under Section 69 Residential Tenancies Act, 2006

Citation: 2704990 ONTARIO INC v Burke, 2024 ONLTB 22639

Date: 2024-04-12

File Number: LTB-L-059129-23

In the matter of: 543 COLERIDGE ST
Oshawa ON L1H6S7

Between: 2704990 ONTARIO INC

And

Darryle Jason Burke

I hereby certify this is a
true copy of an Order dated

APR 12, 2024

Landlord and Tenant Board

Landlord

Tenant

2704990 ONTARIO INC (the 'Landlord') applied for an order to terminate the tenancy and evict Darryle Jason Burke (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 6, 2024.

The Landlord and their representative, Karen Byfield 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 \$2,900.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$95.34. This amount is calculated as follows: \$2,900.00 x 12, divided by 365 days.
5. The Tenant has paid \$11,200.00 to the Landlord since the application was filed.
6. The rent arrears owing to February 29, 2024, are \$17,800.00. The Tenant disputes the amount owed as he had conducted work for a plumbing issue in the rental unit and the Landlord owes him money towards that work. The Tenant did not provide any supporting documentation to that effect. The Landlord argues that the Tenant should have filed a separation application to deal with that matter.
7. Pursuant to section 82 of the *Residential Tenancies Act, 2006* (the 'Act'), a Tenant is permitted to raise any issue that could be the subject of an application if the Tenant complies with disclosure requirements or provides an explanation satisfactory to the Board explaining why the Tenant could not comply. Section 82(2) requires a Tenant to give

advance notice to the Landlord of the Tenant's intent to raise the issue at the hearing and this notice shall be in writing.

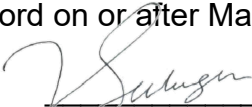
8. The Tenant submitted that he did not serve a list of section 82 issues on the Landlord, and he did not meet the deadline for filing it with the Board.
9. As such, I refused to hear evidence of the Tenant's section 82 issues at the hearing because the Tenant did not provide disclosure of the section 82 issues at least 7 days prior to the scheduled hearing which is required pursuant to the Board's Rule 19.1 and did not provide a reasonable explanation for failing to do so.
10. However, it should be noted that there is no prejudice on the Tenant as this does not preclude the Tenant from filing an application with respect to these issues. He may wish to contact his local legal clinic to get advice in this regard.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$2,900.00 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.
13. Interest on the rent deposit, in the amount of \$86.01 is owing to the Tenant for the period from December 1, 2022, to February 6, 2024.
14. The Tenant is seeking a payment plan to pay the arrears and continue the tenancy. The Tenant is self employed as a plumber and submits that he gets paid weekly, but the amount varies according to the job but it tends to be roughly between \$1,000.00 and \$6,00.00 and his monthly expenses amount to roughly \$1,200.00.
15. Based on the evidence before the Board, I find that it is more likely than not that the Tenant is unable to afford a payment plan to preserve the tenancy. The Tenant's income varies, and he does not seem to have a steady and consistent source income. It would be unfair to grant a payment plan when it is uncertain whether the Tenant can afford to pay the monthly rent plus an amount towards the arrears. The Landlord is seeking a standard order as it is unfair on the Landlord to wait on the Tenant to pay a large sum of money and the Tenant has not paid since October 2023.
16. Considering all the circumstances, I find a delay in eviction to April 30, 2024, to be reasonable to allow some time for the Tenant to either look for an alternative housing or seek assistance in paying off the arrears. As the hearing was on February 13, 2024 and the order is being issued in April, I find that a delay greater than the end of the month is not warranted. 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 not be unfair to postpone the eviction until April 30, 2024 pursuant to subsection 83(1)(b) 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:**
 - \$23,786.00 if the payment is made on or before April 30, 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 April 30, 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 April 30, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$12,672.03. 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 \$95.34 per day for the use of the unit starting February 7, 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 April 30, 2024, the Tenant will start to owe interest. This will be simple interest calculated from May 1 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before April 30, 2024, then starting May 1, 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 1, 2024.

April 12, 2024

Date Issued



Vinuri Sivalingam
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 1, 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 April 30, 2024

Rent Owing To April 30, 2024	\$34,800.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$11,200.00
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	\$23,786.00

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

Rent Owing To Hearing Date	\$26,672.04
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$11,200.00
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	- \$2,900.00
Less the amount of the interest on the last month's rent deposit	- \$86.01
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	\$12,672.03
Plus daily compensation owing for each day of occupation starting February 7, 2024	\$95.34 (per day)