



Order under Section 69 Residential Tenancies Act, 2006

Citation: Duplessis v Murray, 2024 ONLTB 55290

Date: 2024-07-26

File Number: LTB-L-090759-23

In the matter of: 1801, 28 FREELAND ST
TORONTO ON M5E0E3

Between: Eva Marie Duplessis

And

Oneill James Murray



Landlord

Tenant

Eva Marie Duplessis (the 'Landlord') applied for an order to terminate the tenancy and evict Oneill James Murray (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on May 2, 2024.

The Landlord, the Landlord's Legal Representative Kenneth Wakely, and the Tenant attended the hearing.

Preliminary Issues:

Adjournment request

1. The Tenant requested an adjournment, stating that he was unable to prepare for the hearing. According to the Tenant, he received the Notice of Hearing in February 2024 but had technical difficulties submitting his evidence in the Tribunals Ontario Portal. Additionally, the Tenant stated that he attempted to obtain legal advice and was told to simply present his evidence in the hearing. The Landlord opposed the adjournment due to the substantial arrears.
2. After considering the parties' submissions, I denied the Tenant's adjournment request. The Tenant had three months to prepare for the hearing, which is more than sufficient time. The Notice of Hearing clearly outlines the deadlines and methods for submitting evidence, and parties are expected to follow these instructions diligently. The Tenant did not explain why he could not e-mail his evidence to the Landlord and to the Board. Finally, the arrears are significant, and an adjournment would prejudice the Landlord.

Section 82

3. The Tenant requested to raise issues under section 82 of the Residential Tenancies Act (2006) (the 'Act').

4. The Tenant did not notify the Landlord that he was intending to raise section 82 issues prior to the hearing. Additionally, the Tenant did not submit any evidence regarding his issues to the Landlord or to the Board. The Tenant did not provide a reasonable explanation for failing to provide evidence of his issues to the Landlord and the Board at least seven days prior to the hearing, as required by Rule 19.4 of the Board's Rules of Procedure.
5. Since the Tenant did not comply with the Board's Rule 19.4 relating to disclosure, I declined to consider the Tenant's issues under section 82 per Rule 19.5. However, I still heard the Tenant's testimony relating to serious breaches of the Landlord's obligations pursuant to section 83(3)(a) of the Act.

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 \$2,550.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$83.84. This amount is calculated as follows: \$2,550.00 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 May 31, 2024 are \$24,070.00.
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 \$2,550.00 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 \$27.95 is owing to the Tenant for the period from November 25, 2023 to May 2, 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 Tenant testified that he lost his job in September 2023 and remained unemployed until January 2024 due to work shortages. He stated that he has been employed since February 2024 but has not made any payments to the Landlord since then. The Tenant

requested relief from eviction in the form of a payment plan, proposing to pay \$1,275.00 per month in addition to the lawful rent.

12. The Tenant testified that in December 2023, the Landlord attended the rental unit with an appraiser with the intention to inspect the unit in preparation for selling it. According to the Tenant, he left the unit for several days to accommodate the inspection, and when he returned, all his belongings were gone. The Landlord was charged with theft. Since then, the Tenant has been extremely distressed and lost several job opportunities in December 2023 and January 2024 due to the lack of clothes and other belongings he needed to work. The parties agreed that the Tenant has insurance for his personal belongings.
13. The Landlord denied the Tenant's allegations and testified that she is cooperating with the police investigation. The Landlord testified that she relies on the rent to pay for the mortgage and her personal expenses. According to the Landlord, the arrears are significantly affecting her finances, and she cannot afford to keep the rental unit.
14. I do not find the Tenant's testimony to be credible, as he was inconsistent on several points between his direct examination and cross-examination. The Tenant initially stated that he fell into arrears because he lost his job. However, in cross-examination, the Tenant admitted that had been consistently in arrears before losing his job. Additionally, the Tenant initially stated that he was unable to work until February 2024 due to work shortages in the construction industry. Contradictorily, he later testified that there were job opportunities he missed because of his stolen belongings. These conflicting statements undermine the reliability of the Tenant's account.
15. The Tenant did not submit documentary evidence to support his testimony. Given the credibility issues in the Tenant's account, I am unable to determine that the Landlord is responsible for the Tenant's stolen belongings based solely on the Tenant's oral testimony. Consequently, I cannot find that the Landlord is in serious breach of their obligations under section 83(3)(a) of the Act.
16. Upon reviewing the information provided by the Tenant regarding his income and expenses, I find that a repayment plan is not reasonable in this case. Therefore, the tenancy must be terminated. Given that the Tenant has not made any payments to the Landlord since the application was filed and considering the substantial amount of arrears, I find that any delay would be prejudicial to the Landlord. Additionally, the Tenant has had ample time since receiving the N4 Notice to find alternate accommodations. Therefore, I find it would be unfair to grant relief from eviction.

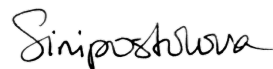
It is ordered that:

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:**
 - \$29,356.00 if the payment is made on or before July 31, 2024. See Schedule 1 for the calculation of the amount owing.

OR

- \$31,906.00 if the payment is made on or before August 6, 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 August 6, 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 August 6, 2024.**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$19,295.73. 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 \$83.84 per day for the use of the unit starting May 3, 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 August 6, 2024, the Tenant will start to owe interest. This will be simple interest calculated from August 7, 2024 at 7.00% annually on the balance outstanding.
 8. If the unit is not vacated on or before August 6, 2024, then starting August 7, 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 August 7, 2024.

July 26, 2024
Date Issued



Kate Sinipostolova
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 February 7, 2025 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 July 31, 2024

| | |
|--|--------------------|
| Rent Owing To July 31, 2024 | \$29,170.00 |
| 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 | \$29,356.00 |

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before August 6, 2024

| | |
|--|--------------------|
| Rent Owing To August 31, 2024 | \$31,720.00 |
| 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 | \$31,906.00 |

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

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|--|--------------|
| Rent Owing To Hearing Date | \$21,687.68 |
| 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 | - \$2,550.00 |
| Less the amount of the interest on the last month's rent deposit | - \$27.95 |
| 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 | \$19,295.73 |
| Plus daily compensation owing for each day of occupation starting May 3, 2024 | \$83.84 (per day) |