



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Kensington Manor v Nolan, 2024 ONLTB 24715

Date: 2024-04-09

File Number: LTB-L-076594-22

In the matter of: 217, 1375 Kensington Parkway
Brockville ON K6V6C8

Between: Kensington Manor

And

Monica Nolan

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

Apr 9, 2024

Landlord and Tenant Board

Landlord

Tenant

Kensington Manor (the 'Landlord') applied for an order to terminate the tenancy and evict Monica Nolan (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on July 17, 2023 and March 27, 2024.

The Landlord's Legal Representative, Joey Kay, the Landlord's Agent, M. Cowan, and the Tenant attended the hearing. The Tenant consulted with Tenant Duty Counsel prior to the hearing.

The following witness testified at the hearing:

Randy Brake (RB), Resident Manager, on behalf of the Landlord

Determinations:

Tenant's Issues/Interim Order Non-compliance

1. For the reasons explained below, the Tenant's claims pursuant to subsection 82(1) of the *Residential Tenancies Act, 2006* (the 'Act') will not be considered by the Board in this application. The Tenant is entitled to raise these issues and seek a remedy by filing her own application at the Board.
2. The Tenant was however permitted to raise these issues as circumstances to be considered by the Board pursuant to subsection 83(3)(a) of the Act. That section states that the Board must deny an eviction application where the Landlord is in serious breach of their obligations under the Act.
3. This application was adjourned from July 17, 2023 as there was insufficient time left in the hearing block to complete the hearing. At that time, the Tenant had uploaded issues she intended to raise at the hearing pursuant to subsection 82(1) of the Act into the LTB portal but had not served the Landlord with these issues or any supporting evidence.

4. Interim order LTB-L-076594-22-IN was issued on July 25, 2023 directing the Tenant to pay any new rent in full and on time as it comes due and to provide the Landlord and LTB with a copy of the "Issues a Tenant Intends to Raise at a Rent Arrears Hearing completed form plus any evidence that she intends to rely upon at the next hearing.
5. There was no dispute that the Tenant did not comply with the terms of the interim order. The Landlord's Legal Representative submitted that the Tenant only paid rent for August and September 2023 and has not made any other payments to the Landlord.
6. Also, at this hearing the Tenant still had not provided supporting evidence to the Landlord and requested to provide this evidence during the hearing. The Tenant stated that she was not able to meet the deadline in the interim order, which was August 31, 2023. The Tenant's claims stem from an incident in August 2022, I find it more likely than not a year is sufficient time for the Tenant to be able to prepare and provide her evidence.
7. In *Regan v. Latimer*, 2016 ONSC 4132 the Divisional Court held that the Board had the authority to refuse to consider the tenant's evidence and submissions pursuant to subsection 82(1) of the Act when the tenant failed to comply with the terms of an interim order for payment.
8. Rule 19.7 of the Landlord and Tenant Board Rules of Practice (the Rules') states that a party who fails to comply with Rule 19 (Disclosure and Evidence) of the Rules or an order or direction for disclosure may not rely on the evidence that was not disclosed.
9. Based on the evidence before me, I was satisfied that the Tenant failed to comply with terms of the interim order with respect to payment of ongoing rent and disclosure of her evidence to the Landlord. Consequently, the Tenant's evidence and submissions with respect to her claims pursuant to subsection 82(1) of the Act were refused.

L1 application

10. 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.
11. As of the hearing date, the Tenant was still in possession of the rental unit.
12. The lawful rent is \$1,121.82. It is due on the 1st day of each month.
13. Based on the Monthly rent, the daily rent/compensation is \$36.88. This amount is calculated as follows: $\$1,121.82 \times 12$, divided by 365 days.
14. The Tenant has paid \$2,188.96 to the Landlord since the application was filed.

Rent Arrears

15. The Tenant disputed the rent arrears owing as claimed by the Landlord. The Tenant stated that due to a flood in her unit in August 2022 she was unable to occupy the rental unit and therefore ought not to be responsible for paying any rent for that period. The Tenant relied on order EAL-99752-22-SA issued November 15, 2022 in support of her claim.

16. The Landlord's Legal Representative submitted that the Tenant is responsible for paying rent until an abatement is ordered. The Landlord's Legal Representative submitted that order EAL-99752-22-SA does not order an abatement of rent and simply refers to the incident of the flood in 2022 and surrounding issues, although incorrectly, as the Tenant raised those issues in that proceeding.
17. Upon review of order EAL-99752-22-SA issued November 15, 2022, which is an order based on the Tenant's motion to Set-aside an *ex parte* order received by the Landlord as the Tenant failed to meet a condition in a previous order, there is no determination of any abatement of rent for these issues. The Tenant raised the flood incident at that hearing for consideration of her breach of a term in the prior order and relief from eviction.
18. The issue of the flood in the rental unit and whether or not the unit was uninhabitable has not been determined by the Board. Without an order of the Board, the Tenant's requirement to pay rent continues as the Tenant is in possession of the rental unit.
19. Therefore, I was satisfied that the rent arrears owing to March 31, 2024 are \$19,649.26.
20. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
21. There is no last month's rent deposit.

Relief From Eviction

22. Pursuant to section 83(3)(a) of the Act, I must refuse to grant eviction if "satisfied that, the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement."
23. The Tenant alleged that the Landlord is in serious breach of their maintenance obligations pursuant to subsection 20(1) of the Act due to mold in the rental unit as a result of a major flood that occurred in August 2022. The Tenant stated that there is black mold in her son's bedroom closet and they are not able to use that room. The Tenant relied on a photo uploaded to the portal of her son's closet wall. She also stated that she has completed a maintenance request every month since regarding this issue.
24. The Landlord's Agent, who is the area Property Manager, stated that they have not received any maintenance requests from the Tenant with respect to mold. The Landlord's Agent also stated that the Resident Manager has not been able to access the Tenant's unit.
25. Randy Brake, Resident Manager, testified that he was finally able to enter the Tenant's unit during the annual fire inspection on February 28, 2024 and the unit appeared to be in good shape. He also testified that the Tenant was present and never asked or mentioned anything to him about a mold issue. He testified that he has provided two Notices of Entry to inspect the unit and both times the Tenant has provided excuses for prohibiting entry such as being sick and having COVID. He further testified that they continue to go back and forth with respect to a date for him to complete the inspection.
26. While the photo dated July 17, 2023 provided by the Tenant shows a possible issue of mold or discolouration in a specific area of what appears to be a closet wall, the evidence

before me was insufficient to find that the Landlord is in serious breach of their maintenance obligations under the Act.

27. The Tenant states that the unit is unsafe, yet when the Resident Manager attended her unit in February 2024, she did not mention this or direct him to the area in question. Further, she has refused entry for a unit inspection twice in the last three months. I find it more likely than not if this issue were serious or on-going that the Tenant would have permitted the unit inspection and would have pointed it out to the Resident Manager in January 2024.
28. Since the Tenant has refused access to the Landlord to inspect the unit, the Landlord has not had any opportunity to remedy the Tenant's complaint. Given this, I am satisfied that the Landlord is not in serious breach of their maintenance obligations under the Act.
29. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of 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.
30. The Landlord's Legal Representative requested a standard eleven day eviction order. She submitted that the Tenant has not paid full or consistent rent since August 2022, the Tenant also did not comply with the interim order issued, and that this is the Landlord's fourth application for non-payment of rent since 2017. The Landlord's Legal Representative also submitted that the Landlord had a previous persistent late payment of rent application. The Landlord's Legal Representative further submits that the Board must take judicial notice of the Tenant's past conduct with respect to non-payment of rent.
31. The Tenant stated that she has lived in the unit for 16 years. Her son and daughter live with her, although her son has been staying with his father which is why she is not receiving child support payments for him. She stated that she fell behind because of costs related to the flood in the unit. She stated that she had to pay rent to stay elsewhere for a period of time, had to replace everything they own, and is still trying to catch up. She receives OW and CTC, however she stated that her boyfriend, who works full time, has recently moved in with her and can assist with paying the rent. She also stated that her mom is willing to lend her some money.
32. The Tenant, although she still disputes the rent arrears claimed by the Landlord, requested a repayment plan. She stated that Homelessness Prevention offered to pay \$1,800.00 if she is not evicted. She proposed that she can pay \$5,000.00 the day after the hearing, then pay the monthly rent on time and an additional \$500.00 on the 20th of each month.
33. The rent arrears currently outstanding are \$19,649.26, this is a significant increase since the application was filed seeking rent arrears of \$5,339.00. The Tenant has demonstrated that the accruing monthly rents cannot be paid given her breach of the interim order and the accumulating rent arrears. The Tenant has also had the benefit of a delay of approximately nine months between these hearings to remedy this application by making payments or find alternate housing. Therefore, in these circumstances, I find that ordering a repayment plan or any further extension would not be fair to the Landlord.

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:**
 - \$20,957.08 if the payment is made on or before April 20, 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 20, 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 20, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$19,709.20. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$36.88 per day for the use of the unit starting March 28, 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 20, 2024, the Tenant will start to owe interest. This will be simple interest calculated from April 21, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before April 20, 2024, then starting April 21, 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 April 21, 2024.

April 9, 2024
Date Issued



Lisa Del Vecchio
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 October 21, 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 20, 2024

Rent Owing To April 30, 2024	\$22,960.04
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,188.96
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	\$20,957.08

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

Rent Owing To Hearing Date	\$21,712.16
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,188.96
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	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord	\$19,709.20
Plus daily compensation owing for each day of occupation starting March 28, 2024	\$36.88 (per day)