



Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: Docusin v Campbell, 2024 ONLTB 54224

Date: 2024-07-25

File Number: LTB-L-007488-24-RV

In the matter of: 670 GRANDVIEW DR
OSHAWA ON L1H8J3

Between: Teresita Docusin
Jeffrey Docusin

And

Kandyce Mae Campbell

I hereby certify this is a
true copy of an Order dated
JUL 25, 2024
Landlord and Tenant Board

Landlords

Tenant

Review Order

Teresita Docusin (the 'Landlord') applied for an order to terminate the tenancy and evict Kandyce Mae Campbell (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

At the hearing, the Landlord said that Jeffrey Docusin is also a Landlord, so the application was amended accordingly to add Jeffrey Docusin as a named party.

This application was resolved by order LTB-L-007488-24 issued on May 2, 2024.

On May 3, 2024, the Landlords requested a review of the order alleging that the order contains a serious error.

On May 6, 2024, interim order LTB-L-007488-24-RV-IN was issued, sending the review request to a hearing.

This request was heard in by videoconference on July 15, 2024.

Only the Landlords attended the hearing. I was satisfied that the Tenant had received the Notice of Hearing and there was no request to adjourn before me. Based on this, I proceeded to hear the review at 9:36 a.m. The Tenant never attempted to attend the morning hearing block after that time.

Determinations:

1. The Landlords said that they do not know why the Tenant did not attend the hearing. The Landlords said that they last reminded the Tenant about the review hearing on July 6, 2024, and the Tenant acknowledged awareness of the hearing date.
2. The Landlords request a review of order LTB-L-007488-24, issued on May 2, 2024, alleging that the order contains a serious error.
3. The Landlords alleged a number of errors in the order, that is, that the hearing Member erred in declaring their N4 notice of termination invalid, and also that the hearing Member told them that he would issue an eviction order based on the allegations of persistent late payment, but then declared their N8 notice of termination invalid in the order he issued. They also alleged that the hearing Member erred in his determinations on their N5 notice of termination.
4. Upon reviewing the order, and the hearing recording, I find that the only serious error contained in the hearing order pertains to the findings on the N4 notice of termination, for the reasons that follow.
5. The Board's Interpretation Guideline #8 provides that a serious error includes an "unreasonable finding of fact on a material issue which would potentially change the result of the order".

N8 Notice of Termination:

6. While the hearing Member informed the Landlord at the hearing, that the Landlord had proved their allegations with respect to persistent late payment of rent contained in the N8 notice of termination, he subsequently noticed that the N8 notice of termination was invalid. In his order, he then proceeded to dismiss the application with respect to persistent late payment of rent.
7. Although the hearing Member made a determination different than that proposed to the Landlord at the hearing, his determination was not a serious error. The N8 notice of termination gave a date of termination of March 2, 2024, which was not the end of a rental period. That rendered the N8 notice of termination invalid. It might have been preferable if the hearing Member had given the Landlord a chance to speak to the validity of the N8 notice of termination, but the outcome would have been the same. Therefore, there is no serious error in the order with respect to the determinations on the N8 notice of termination.

Determinations on Utilities:

8. The hearing Member's determination with respect to the unpaid utilities was not in error.
9. The hearing Member determined that the Landlord had not requested an order for unpaid utilities in the application, and therefore he was not able to consider them.
10. All issues that are to be raised by a party in an application must be disclosed to the other party prior to the hearing. The Landlord had not disclosed this issue of the utilities prior to

the hearing, neither in the N5 notice of termination nor in the application, and therefore, the hearing Member was not able to consider that issue.

N4 Notice of Termination:

11. The hearing Member determined that the N4 notice of termination was defective because the N4 notice of termination was mailed by the Landlords to the Tenant on January 2, 2024, and therefore deemed served on the Tenant five days later, on January 7, 2024. The hearing Member noted that the termination date on the N4 notice of termination was January 16, 2024, which was less than 14 days after the N4 notice of termination was deemed served. That period of notice would have been contrary to the *Residential Tenancies Act, 2006* (the 'Act'). The hearing Member informed the Landlord that he could not issue an eviction order, and the Landlord, rather than have her L1 application dismissed, opted for an order for arrears only with no possibility of eviction.
12. In fact, the Landlords had ticked the box on the certificate of service stating that they served the N4 notice of termination by mail, but the Landlords had also ticked the box stating that the N4 notice of termination was left in the mailbox and under the door of the rental unit. All three boxes were clearly ticked, and the Landlords said that the N4 notice of termination was served all three ways on January 2, 2024.
13. Consequently, the N4 notice of termination was deemed served on the same day, January 2, 2024, by placing it under the door of the rental unit and by placing it in the mailbox. There were 14 days between the date of service and the termination date, and the N4 notice of termination was not defective.
14. The hearing Member's determination that the N4 notice of termination was defective was an unreasonable finding of fact on a material issue which would potentially change the result of the order. The Landlords seek an eviction order, and the hearing Member's order did not give the Landlords the option to evict the Tenant if the Tenant failed to pay the arrears and costs.
15. Therefore, I granted the Landlords' request to review with respect to the L1 application on the basis that the hearing order contains a serious error. The finding that the Landlords were unable to obtain an eviction order was an unreasonable finding of fact that changed the result of the order. I proceeded to hear the L1 application *de novo*.

L1 Application:

16. The Landlords 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.
17. As of the hearing date, the Tenant was still in possession of the rental unit.
18. The lawful rent is \$3,500.00. It is due on the 1st day of each month.

19. Based on the Monthly rent, the daily rent/compensation is \$115.07. This amount is calculated as follows: \$3,500.00 x 12, divided by 365 days.
20. The Tenant has not made any payments since the application was filed.
21. The rent arrears owing to July 31, 2024 are \$24,500.00.
22. The Landlords collected a rent deposit of \$3,500.00 from the Tenant and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
23. Interest on the rent deposit, in the amount of \$76.47 is owing to the Tenant for the period from September 1, 2023 to July 15, 2024.
24. The Landlords request a standard termination order for their L1 application. They said that they attempted to discuss a payment plan with the Tenant before the L1 application was filed in January 2024. They said that the only responses they received from the Tenant were repeated promises to move out. The Landlords submitted documentary evidence of text messages from the Tenant on different dates, in which she informs the Landlords that she will be moving out. She failed to move out on the dates mentioned in the text messages. In the latest text message from the Tenant, submitted by the Landlords, dated July 6, 2024, the Tenant informs the Landlords she will move out by August 31, 2024.
25. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including whether the Landlords attempted to negotiate a repayment agreement with the Tenant, and I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. In particular, the Tenant has failed to pay any rent for seven months, since the Landlords filed the application in January 2024. The Tenant has repeatedly told the Landlords that she would move out, but she has failed to do so, and she has failed to pay rent. The arrears are now substantial, and they are increasing each month. I find that the tenancy is no longer viable, and it is prejudicial to the Landlords for it to continue.

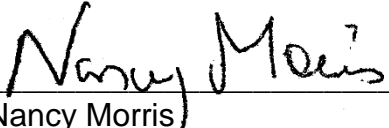
It is ordered that:

1. The request to review order LTB-L-007488-24 issued on May 2, 2024, is granted. The order LTB-L-007488-24 issued on May 2, 2024, is cancelled, and replaced by the following order.
2. The Landlords' L2 application is dismissed.
3. The tenancy between the Landlords and the Tenant is terminated unless the Tenant voids this order.
4. **The Tenant may void this order and continue the tenancy by paying to the Landlords or to the LTB in trust:**
 - \$24,686.00 if the payment is made on or before July 31, 2024. See Schedule 1 for the calculation of the amount owing.

OR

- \$28,186.00 if the payment is made on or before August 5, 2024. See Schedule 1 for the calculation of the amount owing.
5. 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 5, 2024 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
 6. **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 5, 2024.**
 7. The Tenant shall also pay the Landlords compensation of \$115.07 per day for the use of the unit starting July 16, 2024 until the date the Tenant moves out of the unit.
 8. If the Tenant does not pay the Landlords the full amount owing on or before August 5, 2024, the Tenant will start to owe interest. This will be simple interest calculated from August 6, 2024 at 7.00% annually on the balance outstanding.
 9. If the unit is not vacated on or before August 5, 2024, then starting August 6, 2024, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
 10. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after August 6, 2024.

July 25, 2024
Date Issued



Nancy Morris
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 6, 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	\$24,500.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords 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 Landlords owe 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	\$24,686.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before August 5, 2024

Rent Owing To August 31, 2024	\$28,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords 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 Landlords owe 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	\$28,186.00

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

Rent Owing To Hearing Date	\$22,726.05
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$3,500.00
Less the amount of the interest on the last month's rent deposit	- \$76.47
Total amount owing to the Landlords	\$19,335.58
Plus daily compensation owing for each day of occupation starting July 16, 2024	\$115.07 (per day)