



Order under Section 69 Residential Tenancies Act, 2006

Citation: Velasquez v Harris, 2024 ONLTB 83827

Date: 2024-11-04

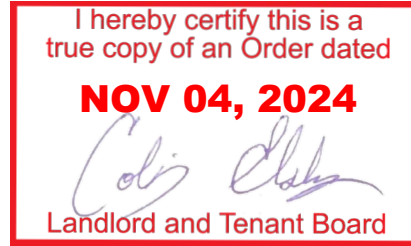
File Number: LTB-L-060342-24

In the matter of: Main Floor, 1621 HICKORY RD
WINDSOR ON N8Y3T2

Between: Pareja Sandy Velasquez
Pedro Ninalopez

And

Anthony Harris
Jennifer Smith



Landlord

Tenant

Pareja Sandy Velasquez and Pedro Ninalopez (the 'Landlord') applied for an order to terminate the tenancy and evict Anthony Harris and Jennifer Smith (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 28, 2024.

The Landlord, Pareja Sandy Velasquez, and the Tenant, Anthony Harris, attended the hearing.

Determinations:

Preliminary Issue- section 82 issues

1. At the hearing, the Tenant sought to raise issues under section 82 of the *Residential Tenancies Act, 2006* (the 'Act'). The Tenant acknowledged that they did not provide the Landlords or the Board with a written description of each issue they intended to raise under section 82 as required under section 82 of the Act and Rule 19.4 of the Board's Rules of Procedure. The Tenant also provided no evidence that they were unable to comply with the disclosure requirements other than that they did not fully read the notice of hearing and as a result, the Tenant was not permitted to raise any issues under section 82 of the Act. The Tenant may still have an opportunity to bring their own application against the Landlords to address the issues they sought to raise at this hearing under section 82, subject to relevant limitation periods.

Arrears of Rent

2. 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.

3. As of the hearing date, the Tenant was still in possession of the rental unit.
4. The lawful rent is \$2,100.00. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$69.04. This amount is calculated as follows: \$2,100.00 x 12, divided by 365 days.
6. The Tenant has not made any payments since the application was filed.
7. The rent arrears owing to October 31, 2024 are \$11,800.00.
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 \$2,100.00 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 \$78.82 is owing to the Tenant for the period from April 29, 2023 to October 28, 2024.

Relief from Eviction

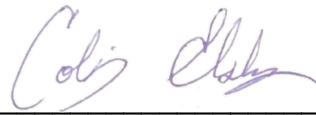
11. The Tenant does not dispute the arrears. The Landlord is seeking a standard termination order.
12. The Tenant is seeking to preserve the tenancy but did not offer details of a payment plan. I canvassed the Tenant with respect to their income and expenses and it appears they could afford a payment plan of the arrears in the amount of \$1,000.00 to \$1,200.00 per month.
13. I find that it would not be fair in the circumstances to impose a repayment plan as I am not satisfied that the Tenant would abide by it. Since the application was filed, the Tenant has not made any payments although working full time. The Tenant testified that he has been withholding rent because of some issues with the unit's air conditioning and the lawn maintenance not being completed. He further testified that he did not have any of the rent he has been withholding because of expenses relating to the unit which included having to purchase 2 air conditioners and a lawn mower. I disabused the Tenant of the notion that he could withhold rent for this purpose. Nonetheless, the Tenant does not have the rent he withheld, and the circumstances of the Tenant has not changed so I am not convinced that he would adhere to any payment plan that I may order. The Tenant asked for 30 days to vacate the unit and I find this short delay to be appropriate.
14. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until November 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:**
 - \$14,086.00 if the payment is made on or before November 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 November 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 November 30, 2024.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$9,640.30. 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 \$69.04 per day for the use of the unit starting October 29, 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 November 30, 2024, the Tenant will start to owe interest. This will be simple interest calculated from December 1, 2024 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 30, 2024, then starting December 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 December 1, 2024.

November 4, 2024
Date Issued



Colin Elsby
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 June 1, 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 November 30, 2024

Rent Owing To November 30, 2024	\$13,900.00
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	\$14,086.00

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

Rent Owing To Hearing Date	\$11,633.12
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	- \$2,100.00
Less the amount of the interest on the last month's rent deposit	- \$78.82
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	\$9,640.30
Plus daily compensation owing for each day of occupation starting October 29, 2024	\$69.04 (per day)

