



Order under Section 69 Residential Tenancies Act, 2006

Citation: Chopra v Sperotto, 2024 ONLTB 80677

Date: 2024-10-29

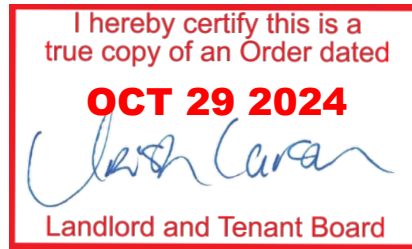
File Number: LTB-L-000993-24

In the matter of: 43 STABLE WAY
KANATA ON K2M1A8

Between: Sunil Chopra

And

Nikolas Allan Sperotto



Landlord

Tenant

Sunil Chopra (the 'Landlord') applied for an order to terminate the tenancy and evict Nikolas Allan Sperotto (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 22, 2024.

The Landlord's Legal Representative, Sobini Tharmalingam and the Landlord attended the hearing.

The Tenant, Nikolas Allan Sperotto attended the hearing. A witness for the Tenant, Emily Lafleache also attended the hearing. Tenant Duty Counsel was not present at the hearing.

Preliminary Issue:

1. The Landlord's Legal Representative raised a preliminary issue that the Tenants section 82 submissions should not be allowed as the Tenant failed to follow the direction of the adjudicator at the hearing on May 23, 2024. The direction given to the Tenant at the hearing on May 23, 2024, was that the Tenant must pay all new rent to the Landlord or the Board until this matter is resolved to reduce the prejudice to the Landlord. The direction also advised the Tenant that if the Tenant failed to do so, then at the next hearing the adjudicator may refuse to accept or consider the Tenants section 82 evidence and submissions.
2. The Landlord's Legal Representative asserts that even though the Interim Order has not yet been issued by the previous adjudicator to outline the above direction, it was clear at the hearing on May 23, 2024, that this direction was given to the Tenant.
3. Prior to my hearing on October 22, 2024, I reviewed the hearing recording from the hearing on May 23, 2024, and I am satisfied that the presiding adjudicator gave the Tenant clear direction that any new rent must be paid to the Landlord or Board until the matter is resolved and failure do so could result in the adjudicator at the next hearing refusing to accept or consider the Tenants section 82 issues. I am satisfied from the recording that at

the hearing on May 23, 2024, after the adjudicator gave the Tenant this direction, he asked the Tenant if he understood, and the Tenant responded “absolutely”.

4. At the hearing on October 22, 2024, the Tenant confirmed that the presiding adjudicator on May 23, 2024, gave him the direction that he must pay any new rent to the Landlord, or the Board and failure do so could result in his section 82 issues not being permitted,
5. At the hearing on October 22, 2024, the Tenant testified that since the last hearing he has not paid any new rent to the Landlord or the Board. He states that he did not pay the rent as he wanted to wait and see how all this plays out.
6. I find that even in the absence of an Interim Order, that the Tenant was given direction at the hearing on May 23, 2024, and that he fully understood the potential consequences of not following the direction, and he chose not to follow the direction and instead chose to wait and see how it all plays out.
7. Based on the above, I refused to accept or consider the Tenants section 82 submissions. The Tenant may seek legal advice regarding the filing of their own application.

Determinations:

1. The amount of rent arrears claimed by the Landlord exceeds the Board’s monetary jurisdiction. Section 207(1) of the Act states that the Board’s monetary jurisdiction is the same as the Small Claims Court’s jurisdiction, which is currently \$35,000.00. Proceeding with this application at the Board extinguishes any rights the Landlord may have to pursue the full amount owing at the Superior Court. The Landlord was made aware of the Board’s monetary jurisdiction and chose to proceed with this application.
2. As of the hearing, the arrears owing were \$36,261.79. The Tenants are being ordered to pay \$35,000.00 plus the Landlord’s costs, which is the Board’s maximum monetary jurisdiction. However, if the Tenants choose to void this order and continue the tenancy, they must pay the full amount of arrears owing to the Landlord.
3. 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.
4. As of the hearing date, the Tenant was still in possession of the rental unit.
5. The lawful rent is \$2,500.00. It is due on the 1st day of each month.
6. Based on the Monthly rent, the daily rent/compensation is \$82.19. This amount is calculated as follows: \$2,500.00 x 12, divided by 365 days.
7. The Tenant has not made any payments since the application was filed.
8. The rent arrears owing to October 31, 2024 are \$36,261.79.

9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. There is no last month's rent deposit.
11. The Tenant disputes the rent arrears as the Tenant states that his current monthly rent is \$2,490.00 per month, not \$2,500.00 which the Landlord has calculated the arrears on.
12. The Tenant also states that before he moved into the rental unit on November 1, 2022, he paid the Landlord the amount of \$7,470.00 which represented three months' rent based on a monthly rent of \$2,490.00, which represented rent for November 1, 2022, and then two additional months to be applied to the two last months of the tenancy. The Tenant stated that he paid the Landlord by cash and did not request a receipt. It was uncontested by the Landlord that the Tenant voluntarily offered to pay three months rent to the Landlord at the beginning of the tenancy on November 1, 2022.
13. The Landlord testified that the Tenant paid him \$7,500.00 in cash a few days prior to the start of the tenancy being November 1, 2022. The amount of \$2,500.00 was applied to the lawful first month rent on November 1, 2022, and the other \$5,000.00 was being held by the Landlord to be applied to the last 2 months of rent when the Tenant vacates. It was uncontested by the Tenant that \$2,500.00 was applied to the first months rent owing on November 1, 2022.
14. On September 22, 2023, the Tenant advised the Landlord that he was considering moving out of the rental unit and at the time the parties discussed a payment plan to bring the Tenants arrears up to date. The Landlord provided a signed payment plan between the Landlord and the Tenant that was signed on September 22, 2023. This payment plan clearly subtracts the amount of \$5,000.00 from the arrears that the Tenant owes. This \$5,000.00 represents the last 2 months rent that the Landlord was holding that was given to the Landlord a few days prior to the tenancy starting on November 1, 2022. It was uncontested that the Landlord deducted the \$5,000.00 from the arrears owing on the payment plan and that this represents the \$5,000.00 that the Tenant paid the Landlord in cash at the beginning of the tenancy for the last two months of rent.
15. The Landlord's Legal Representative testified that the amount of \$5,000.00 that was deducted on the payment plan signed by the parties on September 22, 2023, was taken into consideration when filing the application.
16. The Tenant testified that when he moved into the rental unit on November 1, 2022, the lease agreement was between himself, his ex-partner and the Landlord and was based on a monthly rent of \$2,490.00. This was uncontested by the Landlord.
17. The Tenant testified that shortly after the lease commenced that him and his ex-partner separated, and they requested that a new lease be negotiated by taking his ex-partner of the lease and drafting a new lease to have him be the sole Tenant. He stated that his understanding was that the rent amount of \$2,490.00 would remain the same and the only change on the new lease would be removing his ex-partner.
18. The Landlord testified that himself and the Tenant negotiated a new lease when they asked him to remove the Tenants ex-partner and they agreed on \$2,500.00 per month and the new lease agreement was signed by the Landlord and the Tenant on December 13, 2022, which showed a monthly rent amount of \$2,500.00 per month with the lease

commencing on November 1, 2022. A copy of the signed lease agreement was provided by the Landlord.

19. The Landlord testified that the Tenant asked the Landlord to keep the start date of the lease as November 1, 2022, as he was required to have documentation for another court proceeding that showed that he had resided at the rental unit since that date.

Analysis

20. There was no dispute between the parties that the Tenant paid three months rent to the Landlord a few days before the tenancy began on November 1, 2022. However, there is a dispute on how much that amount was. The Landlord testified that it was for the sum of \$7,500.00, and the Tenant testified that it was for the sum of \$7,470.00. As the Landlord did not issue a receipt for this amount and the Tenant did not request a receipt it is difficult to determine what the amount was. However, I am persuaded by the Landlord's testimony and signed payment plan that the amount of \$5,000.00 was deducted from the arrears owing. So, essentially even if the Tenant only paid the Landlord the sum of \$7,470.00, he is benefiting from the amount of \$5,000.00 being applied to the arrears owing on the payment plan by the amount of \$20.00.
21. I find that the current monthly rent at the beginning of the tenancy that commenced on November 1, 2022, was \$2,490.00, and that rent amount changed when a new lease was negotiated with the Tenant and signed on December 13, 2022, changing the monthly rent to \$2,500.00.
22. The new lease should not have been back dated and showing a commencement date of November 1, 2022, when it was signed on December 13, 2022, rather it should have commenced on January 1, 2023, with the new rent amount of \$2,500.00. Therefore, I find that the monthly rent owing for November 2022, and December 2022, would be \$2,490.00. However, the months of November 2022 and December 2022, do not form part of the arrears owing in this application. As the new lease agreement was signed on December 13, 2022 by the Landlord and the Tenant, I find that the new monthly rent of \$2,500.00 would commence on January 1, 2023.

Relief from Eviction

23. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
24. The Landlord entered a payment plan with the Tenant on September 22, 2023, to try and assist the Tenant with retaining the tenancy, however, the arrears kept accruing.
25. The Tenant requested relief by way of an extended order for a 60-day period.
26. The Tenant testified that he owns his own company, and his monthly income is approximately \$5,000.00 per month.

27. The Tenant stated that he has the money to pay the rent, and that depending on the amount of arrears the Board orders he has money set aside to pay the arrears.
28. The Tenant stated that if the Board was to order the full amount of arrears on the application that he potentially has saved enough to pay the full amount owing.
29. I do not find that an extended order of 60 days to be appropriate in the circumstances. The Tenant has not paid any rent to the Landlord since the application has been filed. While the Tenant has not been paying rent he has been saving funds to pay the arrears when ordered to do so.
30. I have also taken into consideration the financial hardship that this has caused the Landlord and the arrears are very high, exceeding the Boards jurisdiction.

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:**
 - \$36,447.79 if the payment is made on or before October 31, 2024. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$38,947.79 if the payment is made on or before November 9, 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 9, 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 9, 2024.**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$35,186.00. 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 \$82.19 per day for the use of the unit starting October 23, 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 9, 2024, the Tenant will start to owe interest. This will be simple interest calculated from November 10, 2024 at 6.00% annually on the balance outstanding.

8. If the unit is not vacated on or before November 9, 2024, then starting November 10, 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 November 10, 2024.



Trish Carson

Member, Landlord and Tenant Board

October 29, 2024
Date Issued

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 May 10, 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 October 31, 2024

Rent Owing To October 31, 2024	\$36,261.79
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	\$36,447.79

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before November 9, 2024

Rent Owing To November 30, 2024	\$38,761.79
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	\$38,947.79

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

Rent Owing To Hearing Date	\$35,569.97
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	- \$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	\$35,186.00
(Arrears are capped at the \$35,000 monetary jurisdiction)	
Plus daily compensation owing for each day of occupation starting October 23, 2024	\$82.19 (per day)