



Order under Section 69 Residential Tenancies Act, 2006

Citation: Luu v Notley, 2024 ONLTB 8113

Date: 2024-02-07

File Number: LTB-L-075125-23

In the matter of: 9 ELITE RD
CALEDON VILLAGE ON L7K0L2

Between: Mai huyen trang Luu

And

Christopher Notley



Landlord

Tenant

Mai huyen trang Luu (the 'Landlord') applied for an order to terminate the tenancy and evict Christopher Notley (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 3, 2024.

The Landlord and Landlord's legal representative R. Bassar and the Tenant and Tenant's Legal Representative D. McIntyre attended the hearing.

The Landlord's claim for arrears exceeds the Board's monetary jurisdiction of \$35,000.00. The Landlord indicated a desire to proceed with the hearing of the application and voluntarily waived the portion of the claim that exceeds the Board's monetary jurisdiction.

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 \$7,800.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$256.44. This amount is calculated as follows: \$7,800.00 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 January 31, 2024 are \$46,800.00.
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 \$7,800.00 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 \$221.71 is owing to the Tenant for the period from November 15, 2022 to January 3, 2024.
10. There is a dispute with respect to the rent arrears owing.

Landlord's Evidence:

11. At the hearing, the Landlord testified that she entered into a lease agreement with the Tenant on November 15, 2022. Both parties agreed that the monthly rent could be paid via e-transfer. The lease, submitted as evidence during the hearing, indicated that the Landlord agreed to provide the Tenant with her bank account information for the e-transfer. The Landlord testified that she has not received rent payments since August 2023 up to the present date. Two bank account statements were submitted by the Landlord's legal representative as evidence during the hearing. The Landlord testified that she provided the Tenant with two bank accounts—one personal and one business—and both account statements showed no rent payments received from the Tenant. The Landlord further testified that she conducted an investigation with her bank, confirming the absence of any transfers from the Tenant's bank institution.

Tenant's Evidence:

12. At the hearing, the Tenant testified that he primarily resides in the United States, and uses the Wise financial technology company to exchange and transfer funds from his US bank account to the Landlord's Canadian bank account to pay his monthly rent. The Tenant testified that he sent four payments towards his rent payments of \$5,725.05 USD each to the Wise company in August, September, October, November, and December 2023. Additionally, the Tenant mentioned that the payment for January's rent had not yet been sent to the Landlord. The Tenant's legal representative submitted the Tenant's US bank account statements and confirmation letters from Wise as evidence during the hearing. The Tenant testified that he reached out to Wise to investigate, and the Tenant's Legal Representative submitted a letter from Wise as evidence during the hearing. The letter clarifies that the transfers were sent.

Analysis:

13. This is the Landlord's application for an order to terminate the tenancy and evict the Tenant because of the non-payment of rent. The Landlord bears the burden of proving that the Tenant did not pay the rent. In this case, the Landlord has discharged that burden by presenting two bank records indicating the absence of deposited funds. The Tenant has not successfully challenged the Landlord's evidence about the amount owing. Although the Tenant's evidence shows that the transfers may have been sent, there is no concrete and convincing evidence that it was received. The Tenant is responsible for ensuring that his rent payments are transferred successfully to the Landlord, which he has not done. Therefore, that the best evidence before me regarding the amount owing is the Landlord's evidence, including their bank records. The crucial question before me, it is who is in a

better position to provide a paper trail on the handling of the money. I find that the Tenant is better positioned to provide such evidence.

14. The Tenant uses an unconventional system to make his rent payment, he confirmed sending funds to the Wise, a financial technology company, capable of providing detailed information on the transaction. The Tenant also acknowledged that the Wise could trace the funds after the exchange, although it may take time. Conversely, it is unreasonable to require the Landlord to access the Wise to create a paper trail. The Tenant's legal representative argued that it is the Landlord's obligation to investigate with the bank; however, I disagree. The Landlord has testified to engaging with her financial institution and providing bank records, both of which indicate no deposits from the Tenant between August and December 2023.
15. The Landlord presented two bank records during the hearing to prove the absence of deposited funds from the Tenant's financial company between August and December 2023. While the burden of proof typically rests with the applicant, the Landlord, in this case, has strong evidence that the money was not paid. Consequently, the Tenant is obligated to prove that the funds were indeed paid. In this instance, I find that the Tenant has not fulfilled this obligation.

Relief from eviction:

16. 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.
17. The Tenant's Legal Representative has opposed the Landlord's eviction request and seeks relief from the eviction. The Tenant requested 60 days to investigate with the Wise company and make rent payments. However, at the hearing with the Board, the Tenant did not provide a clear reason for not conducting further investigations after November 16, 2023, with the Wise company.
18. At the hearing, the Landlord seeks a standard 11-days eviction order due to the high amount of rent arrears. The Landlord's legal representative stated that the Landlord has not received any rent payments since August 2023, and the amount owing exceeds the Board's monetary jurisdiction of \$35,000.00. This poses a significant financial burden to the Landlord. The Landlord emphasized the considerable financial strain caused by the high amount of rent arrears. As a small landlord, she heavily relies on rent to meet her mortgage obligations. Based on the evidence presented, I find that granting the Tenant an additional 60 days, as requested, would be prejudicial 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:**

- \$54,786.00 if the payment is made on or before February 18, 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 February 18, 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 February 18, 2024**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$31,933.61. 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 \$256.44 per day for the use of the unit starting January 4, 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 February 18, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 19, 2024 at 7.00% annually on the balance outstanding.
 8. If the unit is not vacated on or before February 18, 2024, then starting February 19, 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 February 19, 2024.

February 7, 2024
Date Issued



Joy Xiao
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 August 19, 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 February 18, 2024

Rent Owing To February 29, 2024	\$54,600.00
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	\$54,786.00

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

Rent Owing To Hearing Date	\$39,769.32
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	- \$7,800.00
Less the amount of the interest on the last month's rent deposit	- \$221.71
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	\$31,933.61
Plus daily compensation owing for each day of occupation starting January 4, 2024	\$256.44 (per day)