



Order under Section 69 Residential Tenancies Act, 2006

Citation: Shai Katz v Adegbenro benjamin Adeoba, 2023 ONLTB 45200

Date: 2023-06-21

File Numbers: LTB-L-006096-23 and LTB-T-064731-22

In the matter of: 2305, 2916 HIGHWAY 7
CONCORD ON L4K0K6

Between: Shai Katz

And

Adegbenro benjamin Adeoba and Patience
tuele Sanusi

I hereby certify this is a
true copy of an Order dated
Jun 21 2023
Landlord and Tenant Board

Landlord

Tenant

Shai Katz (the 'Landlord') applied for an order to terminate the tenancy and evict Adegbenro benjamin Adeoba and Patience tuele Sanusi (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 8, 2023.

The Tenant's application LTB-T-064731-22 was also heard on June 8, 2023 (see paragraph 1, hereof).

The Landlord, the Landlord's Representative, Evgeny Atekar and the Tenant attended the hearing.

Preliminary Issue"

1. Section 82 of the Act provides that at a rent arrears hearing the Board shall permit the Tenant to raise any issue that could be the subject of an application made by the tenant if the tenant provides the landlord and the Board with advance disclosure of the issue and the evidence in accordance with the Board's rules. The Tenant in advance of the hearing disclosed that he was raising a claim that the Landlord failed to meet his maintenance obligations with respect to the floors which is also subject to the same issue in Tenant's application LTB-T-064731-22. The Landlord was prepared to address the Tenant's issues, therefore this order also resolves LTB-T-064731-22.

Determinations:

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 \$2,650.00. It is due on the 1st day of each month. The Ontario Rent Increase guideline does not apply to the rental unit since it is rented for the first time after November 15, 2018. There was no dispute this is a newly constructed condominium whereby the Landlord acquired on May 27, 2020. The exemption applies based on when the rental unit was first occupied and applies to all tenancies going forward for this unit.
5. Based on the Monthly rent, the daily rent/compensation is \$87.12. This amount is calculated as follows: \$2,650.00 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 June 30, 2023 are \$15,910.00.
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 \$1,990.00 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 \$77.58 is owing to the Tenant for the period from May 11, 2021 to June 8, 2023.
11. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (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. The Tenant doesn't have income to pay rent or arrear, however offered to clear the outstanding arrears by August 31, 2023. Given the payment history having made no payments since October 2022, and the amount of arrears outstanding, it would be unfair to issue a conditional order.

Section 82 Issue:

12. On June 25, 2022, the water sprinkler was activated in the second floor bathroom and caused a flood wetting all the flooring in the entire rental unit except one bathroom. The Tenant reported the issue to the Landlord that same day; on June 29 and July 1, 2022 the Tenant was asked to remove all his property and to move out because the floors had to be removed; on July 4 and 5, 2022 the Tenant moved his belongs and Landlord's insurance company attended the unit to inspect and on or around July 11 the flooring was removed. On October 24 to 26, 2022, the condominium corporation repaired the washroom and replaced the baseboards. The Landlord's contractor replaced the floors on November 22 and 23, 2022. During this time the flooring was concrete and the Tenant lost full use of a bathroom.

13. Section 20 of the Act states that a landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.
14. In *Oyskiw v. CJM Property Management Ltd.*, [2016] O.J. No. 3817 (C.A.) ('*Oyskiw*'), the Court of Appeal for Ontario determined that a landlord that undertakes reasonable steps to maintain and repair a property, while mitigating any loss to the residents by providing reasonable alternative facilities or services during the period of repairs, is not liable under the Act or tenancy agreement for maintenance and repair issues that may arise.
15. In this present case, I do not find that the Landlord took reasonable steps to mitigate the impact, nor did he do the repairs and work within a reasonable time period. Although the Landlord needed the condominium corporation to do work before the floors were installed, it appears the Landlord following up with condo management one time in writing via an email dated October 24, 2022 which is not reasonable. Although, the Landlord stated many telephone calls were made, he provided no details such as dates, contacts or purpose. There were no reasons provide by the Landlord to explain the delay for the repairs to have taken five months. The Landlord relied on his insurer to pay and do the repairs but the consequences to the Tenant were not considered.
16. The Tenant having to live in the unit with a small child and pregnant wife on concrete flooring from June 25, 2022 to November 23, 2033, is not what the Tenant expected and disrupted his families normal use of the rental unit as the unit had to be continuously cleaned to mitigate for the dust. The amount of dust was supported by photograph which would have impacted on air quality.
17. I considered the Landlord's assertion that the Tenant delayed moving his property but it's not unreasonable that the Tenant took a few days given he was told and expected to move all his property alone when he refused to vacate the unit. There was no evidence that anyone provided assistance. There was also no evidence that the Tenant caused the damage to the rental unit. The Landlord's claim was through insurance, which is acknowledged but his actions taken do not demonstrate that he mitigated for the disruption and other lost use of the rental unit.
18. A reasonable abatement is 30% rent for five months for the Landlord's serious maintenance breach with respect to floors and lost use of one bathroom is reasonable in the amount of \$2,985.00 (rent \$1990.00 x 30%x 5 months) for the period of June 25 to November 23, 2022. The Tenant incurred costs for Airbnb while work was undertaken by the condominium corporation from October 23 to 27, 2022 or \$678.00 as supported by invoice. It's unclear what prompted the Tenant to stay at Airbnb from October 29-31, 2022 when there was no work undertaken in the unit.
19. The Tenant is entitled to his costs of \$48.00 for filing the application.
20. The total amount the Landlord owes the Tenant is \$3,711.00 (\$2,985.00+\$678.00 and \$48.00).

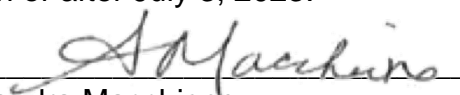
It is ordered that:

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:**
 - \$12,385.00 if the payment is made on or before June 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$15,035.00 if the payment is made on or before July 2, 2023. 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 July 2, 2023 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 July 2, 2023**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$8,363.42. 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 \$87.12 per day for the use of the unit starting June 9, 2023 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 July 2, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 3, 2023 at 6.00% annually on the balance outstanding.
 8. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
 9. If the unit is not vacated on or before July 2, 2023, then starting July 3, 2023, the Landlord 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 Landlord on or after July 3, 2023.

June 21, 2023
Date Issued


Sandra Macchione
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 January 3, 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.

*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

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 June 30, 2023

Rent Owing To June 30, 2023	\$15,910.00
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} and out of pocket expenses	- \$3,711.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$12,385.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before July 2, 2023

Rent Owing To July 31, 2023	\$18,560.00
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} and out of pocket expenses	- \$3,711.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$15,035.00

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

Rent Owing To Hearing Date	\$13,956.96
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	- \$1,990.00
Less the amount of the interest on the last month's rent deposit	- \$77.58
Less the amount the Landlord owes the Tenant for an {abatement/rebate} and out of pocket expenses/app Fee	- \$3,711.00

Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$8,363.42
Plus daily compensation owing for each day of occupation starting June 9, 2023	\$87.12 (per day)