



Order under Section 69 Residential Tenancies Act, 2006

Citation: Sekyewa v Fuller, 2024 ONLTB 5715

Date: 2024-01-24

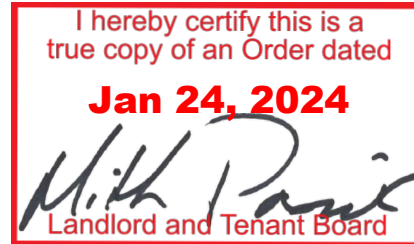
File Number: LTB-L-072436-23

In the matter of: A1, 63 FIRST ST
ORANGEVILLE ON L9W2E8

Between: Oscar Sekyewa

And

Fredrick David Fuller



Landlord

Tenant

Oscar Sekyewa (the 'Landlord') applied for an order to terminate the tenancy and evict Fredrick David Fuller (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 9, 2024.

The Landlord and the Tenant attended the hearing.

Preliminary Issue:

1. At the hearing, the Tenant attempted to raise issues under section 82 of the *Residential Tenancies Act, 2006* (the 'Act') with respect to the bathroom and water temperature.
2. The Tenant did not comply with the requirements set out in subsection 82(2) of the Act with respect to disclosure of issues intended to be raised at the hearing. The Tenant did not provide a clear or satisfactory explanation as to why he was unable to comply with the disclosure requirements. Given this, we did not permit the Tenant to raise this issue at the hearing.

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 \$1,296.63. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$42.63. This amount is calculated as follows: \$1,296.63 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 is \$9,076.41.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.

Relief from Eviction:

9. We 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 January 31, 2024 pursuant to subsection 83(1)(b) of the Act.
10. The Tenant does not dispute the amount claimed owing. The Tenant testified that he was involved in an automobile accident, has injuries and is currently in legal negotiations for a settlement. His legal counsel secured this rental unit and had been paying his rent until July 23, 2023. He is currently on ODSP receiving approximately \$1096.00 per month.
11. The Tenant initially proposed paying the Landlord \$200.00 until his insurance claim is settled. In the alternative, he stated that he could obtain the necessary funds to pay the arrears in full by January 31, 2024.
12. Given the Tenant's evidence that his current income is less than the lawful monthly rent, we are of the view that he is unable to afford to remain in the rental unit. As he is unable to make any meaningful payments towards the arrears or pay the lawful monthly rent in full, we believe it would be prejudicial to the Landlord to grant the Tenant relief from eviction by way of a conditional order. However, we find it reasonable to postpone the eviction to January 31, 2024 to give the Tenant an opportunity to void the order by paying the amount owing in full.

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:**
 - \$9,262.41 if the payment is made on or before January 31, 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 January 31, 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 January 31, 2024**

5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$8,349.45. 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 \$42.63 per day for the use of the unit starting February 1, 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 January 31, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 1, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before January 31, 2024, then starting February 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 February 1, 2024.

January 24, 2024
Date Issued



Mitch Panciuk
Member, Landlord and Tenant Board



Dawn Sullivan
Vice-Chair, 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 1, 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 January 31, 2024

Rent Owing To January 31, 2024	\$9,076.41
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	\$9,262.41

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

Rent Owing To Hearing Date	\$8,163.45
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	\$8,349.45
Plus daily compensation owing for each day of occupation starting February 1, 2024	\$42.63 (per day)