



MAY 31, 2023

**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Chunrong Weng v Shannon Seedhouse, 2023 ONLTB 40081

Date: 2023-05-31

File Number: LTB-L-059176-22

In the matter of: 1ST FLOOR + BSMT, APT 2, 65 ELGIN ST E
OSHAWA ON L1G1S9

Between: Chunrong Weng Landlord

And

Shannon Seedhouse Tenant

Chunrong Weng (the 'Landlord') applied for an order to terminate the tenancy and evict Shannon Seedhouse (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on April 25, 2023 at 11:22 a.m.

The Landlord Chunrong Weng, interpreter Xiang Went, representative Yun Tao Li licensed paralegal, and the Tenant Shannon Seedhouse and the Tenant's witness Shawn Bradley attended 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 \$1,071.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$35.21. This amount is calculated as follows: \$1,071.00 x 12, divided by 365 days.

Amount of Arrears in Dispute

5. The Landlord testified the rent arrears owing to April 30, 2023 are \$11,730.00 and that the Tenant has not made any payments since the application was filed.
6. The Landlord submitted into evidence a detailed rent ledger illustrating a month-by-month record of rent arrears owing, including cumulative figures which supported both his oral testimony and the details on the L1/L9 update sheet.

7. The Tenant testified she made cash payments to the Landlord each month until January 2023 and did not pay since. The Tenant further testified she would pay the Landlord when the Landlord would stop by on the first Sunday of the month.
8. The Tenant acknowledged she owed rent arrears but explained that she had never received receipts and did not know she had to keep documentation.

Analysis

9. When asked for further details about the alleged cash payments, no particulars were provided by the Tenant such as the amounts of the cash payments or the total amount of arrears owing.
10. The Landlord denied receiving any cash payments.
11. A very similar situation was addressed by the Divisional Court in *Mauti v. Gibbs*, 2019 ONSC 3355

27. In any event, in my view, the Vice Chair was correct in holding that the burden of proof for the existence of grounds for eviction lies strictly on a landlord who applies under an N4 process for arrears of rent. While the ultimate persuasive burden never shifts, once a landlord denies receiving funds, the tenant will have an evidentiary burden or a chance to advance some evidence to positively prove that he or she paid rent.

12. In the absence of any documentary evidence to corroborate her claimed payment, and the fact the Landlord submitted a detailed rent ledger into evidence, I find that the Tenant has not established on a balance of probabilities that she made any additional cash payments to the Landlord during the period from the filing of the L1 Application to the date of the hearing.
13. I find the rent arrears owing to April 30, 2023 are \$11,730.00 and the Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Last Month's Rent Deposit in Dispute

14. The Landlord testified there is no last month's rent deposit and explained this was consistent with the amount listed on the Application.
15. The Tenant testified that a deposit of \$1,050.00 was paid to the previous landlord when the Tenant moved into the unit and an additional \$21.00 was paid to the Landlord when he acquired the unit.

Analysis

16. In the absence of any documentary evidence to corroborate her oral evidence nor any specific dates as to when the rent deposit was made to the prior Landlord, on a balance of probabilities I find that there is no rent being held on deposit by the Landlord.

Relief from Eviction

Serious Breach of Landlord's Responsibilities

17. The Tenant alleged that there have been ongoing maintenance problems with the unit and submitted that these circumstances result in mandatory refusal of eviction under subsection 83(3)(a) of the Act. That section states that the Board must deny eviction when "the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement."
18. The events alleged by the Tenant include pest infestation, heating issues and a water leak causing flooding.
19. The Tenant testified the pest infestation occurred from on or about July 2022 to March 2023 when the issue was remedied at the Tenant's expense. The Landlord denied knowing about the pest issues.
20. The Tenant further testified there were issues with the heater in the unit in January 2023, which the Landlord repaired after being informed by the Tenant. The Landlord verified the heating issues were repaired by the end of the month.
21. The Tenant testified the water leak issues first occurred in February 2023. The Tenant further testified that she contacted the Landlord by text and the Landlord came to repair the leak in February right away. The Tenant explained the water leak returned in April and notified the Landlord by text on April 23, 2023, and the Landlord came on April 24, 2023 to repair the leak.
22. The Tenant testified that the leak was not fully repaired on April 24, 2023 and that the Landlord told the Tenant that he would not repair the leak until the Tenant vacated the unit. The Tenant's witness, Mr. Bradley, who is an occupant of the unit, provided testimony which corroborated the Tenant's account of events, and further testified that the leak leads to flooding in the basement and specified that the Landlord departed the unit at approximately 4:30 p.m. on April 24, 2023 leaving bags and maintenance materials behind and had not returned since.
23. The Landlord testified the Tenant was exaggerating about the severity of the leak and that the maintenance issues had been resolved so the water was in fact working when he departed the unit on April 24, 2023 supported by Mr. Bradley's own testimony that he was showering. The Landlord further testified that the root cause of the leak may be in the Tenant's unit or in an adjacent unit, had called a contractor, and the remainder of the issues, as minor as it may be, would be repaired within 7 days. The Landlord denied that he threatened the Tenant to withhold repairing the unit and testified that he always repairs maintenance issues in a timely manner.

Analysis

24. With respect to the pests and heating issues, subsection 83(3)(a) of the Act speaks in the present tense, thus I cannot consider past breaches that have been remedied for the

purpose of determining whether eviction must be denied. With respect to the water leak issue although the Tenant claims the problems are ongoing, the evidence before me establishes that the Landlord has addressed the leak and problem as been resolve or at least substantially mitigated.

25. The use of the word “serious” in subsection 83(3)(a) establishes that not all maintenance breaches of the Landlord’s responsibilities can be considered; only those determined by the Member to be serious will invoke section 83(3) of the Act. Even if all of these issues were ongoing, I am not satisfied based on the Tenant’s evidence or description of them that the matters, alone or in the aggregate, constitute a serious breach of any responsibilities of the Landlord under the Act.

Other Circumstances

26. 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 June 30, 2023 pursuant to subsection 83(1)(b) of the Act.

27. The Tenant testified she is the primary caregiver for her 13-year-old school aged child. The Tenant expressed that it would be a hardship to find a new affordable unit due to her family situation, as well as the rental market conditions and requested additional time to complete a housing search. I accept that finding a new rental unit will be challenging for the Tenant.

28. I am persuaded by the Tenant’s testimony with respect to challenges finding an appropriate unit for her family and find that it would not be unfair to postpone the eviction until June 30, 2023.

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:**
 - \$12,987.00 if the payment is made on or before May 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$14,058.00 if the payment is made on or before June 30, 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 June 30, 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 June 30, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$11,739.95. 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 \$35.21 per day for the use of the unit starting April 26, 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 June 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 1, 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 June 30, 2023, then starting July 1, 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 1, 2023.

May 31, 2023
Date Issued

Greg Witt
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 December 31, 2023 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 May 31, 2023

Rent Owing To May 31, 2023	\$12,801.00
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	\$12,987.00

B. 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	\$13,872.00
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	\$14,058.00

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

Rent Owing To Hearing Date	\$11,553.95
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	\$11,739.95
Plus daily compensation owing for each day of occupation starting April 26, 2023	\$35.21 (per day)