



Order under Section 69 Residential Tenancies Act, 2006

Citation: Vayani v Muhammad, 2023 ONLTB 50379

Date: 2023-07-20

File Number: LTB-L-015047-23

In the matter of: Upper Portion of House, 3494 BALA DR
Mississauga ON L5M0G6

Between: Naveed Vayani

And

Noor Muhammad

I hereby certify this is a
true copy of an Order dated
JUL 20, 2023
Landlord and Tenant Board

Landlord

Tenant

Naveed Vayani (the 'Landlord') applied for an order to terminate the tenancy and evict Noor Muhammad (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 19, 2023.

The Landlord's Legal Representative Gloria Kaur, the Landlord, and the Tenant attended the hearing. The Tenant spoke with Tenant Duty Counsel prior to 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 \$2,700.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$88.77. This amount is calculated as follows: \$2,700.00 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 June 30, 2023 are \$32,400.00.
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 \$2,500.00 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 \$95.75 is owing to the Tenant for the period from June 1, 2020 to June 19, 2023.

Board's monetary jurisdiction

10. Section 207(1) of the Act provides that the Board cannot order a person to pay more than \$35,000.00.
11. This order terminates the tenancy and requires the Tenant to pay the rent arrears outstanding plus the cost of filing the application, and less the rent deposit being held by the Landlord. This amount, which the Tenant is being ordered to pay in accordance with subsection 74(3) of the Act, is under the Board's monetary jurisdiction of \$35,000.00.
12. The order also provides that the Tenant can choose to void the order in accordance with subsection 74(4) of the Act by paying the following amounts before the order is enforceable:
 - (a) the amount of rent that is in arrears under the tenancy agreement;
 - (b) the amount of additional rent that would have been due under the tenancy agreement as at the date of payment by the tenant had notice of termination not been given;
 - (c) the amount of NSF cheque charges charged by financial institutions to the landlord in respect of cheques tendered to the landlord by or on behalf of the tenant, as allowed by the Board in an application by the landlord under section 87;
 - (d) the amount of administration charges payable by the tenant for the NSF cheques, as allowed by the Board in an application by the landlord under section 87; and
 - (e) the costs ordered by the Board
13. The amount the Tenant must pay to void the order is over \$35,000.00. As the Tenant is not legally required to pay the amount necessary to void the order, I find that the monetary jurisdiction contained in section 207(1) of the Act does not apply to this portion of the order.
14. The N4 Notice was served on the Tenant on January 28, 2023 and claimed arrears for the period beginning July 1, 2022.
15. The Landlord testified that the Tenant last paid rent in June 2022. The Landlord stated that he is in financial distress due to the Tenant's non-payment of rent and requires the rental income to pay the mortgage, taxes, insurance, and other carrying costs of the property. He also stated that he has three children and is caring for his aging parents.
16. The Tenant acknowledged that he owes rent, but he did not agree to the amount of arrears owing. He stated that he was unsure of the payments that he had made and did not come prepared with documents to support his position. The Tenant was granted a short time to provide evidence by way of post-hearing submissions.
17. The Tenant submitted documents showing highlighted bank transactions on February 1, 2022, May 20, 2022, June 7, 13 and 20, 2022. He also stated that some payments were made from his wife's account but provided no details.

18. These documents are not relevant as they all predate the period for which the arrears are claimed and therefore do nothing to support the Tenant's position that he has made payments since July 2022.
19. The Tenant testified that he was involved in an accident and was expecting a settlement, after which he would be able to pay the Landlord in full. He was uncertain of when he might receive the settlement funds. He stated that he has three children living with him (ages 19, 17, and 16) and in the event of an eviction order would need a few months to move out, or that he could move out by July 31, 2023.
20. 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.

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:**
 - \$35,286.00 if the payment is made on or before July 31, 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 31, 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 31, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$28,976.88. 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 \$88.77 per day for the use of the unit starting June 20, 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 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 1, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before July 31, 2023, then starting August 1, 2023, 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 August 1, 2023.

July 20, 2023
Date Issued



Margo den Haan
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 February 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 July 31, 2023

Rent Owing To July 31, 2023	\$35,100.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$35,286.00

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

Rent Owing To Hearing Date	\$31,386.63
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$2,500.00
Less the amount of the interest on the last month's rent deposit	- \$95.75
Total amount owing to the Landlord	\$28,976.88
Plus daily compensation owing for each day of occupation starting June 20, 2023	\$88.77 (per day)