



JUN 22, 2023

Elan Sherntov

Landlord and Tenant Board

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

Citation: Li v Smith, 2023 ONLTB 44529

Date: 2023-06-22

File Number: LTB-L-081587-22

In the matter of: MAIN LEVEL, 512 EUCLID STREET
WHITBY ON L1N5C1

Between: Guohua Li and Jianying Hao Landlord

And

Kristin Tracey Smith Tenant

Guohua Li and Jianying Hao (the 'Landlord') applied for an order to terminate the tenancy and evict Kristin Tracey Smith (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 6, 2023.

The Landlord Guohua Li, the Landlord's Representative Jie Situ, and the Tenant 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 \$2,400.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$78.90. This amount is calculated as follows: \$2,400.00 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 \$21,600.00.
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 \$2,400.00 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 \$47.51 is owing to the Tenant for the period from September 17, 2021 to June 6, 2023.
10. The Tenant requested relief from eviction in the form of a payment plan. The Tenant testified that she could pay \$300.00 towards the arrears each month, with an additional \$900.00 in the summer months (July and August). On that schedule it would take approximately 4.5 years for the arrears to be paid off.
11. The Tenant testified that the Landlord had previously agreed to her proposed repayment plan, but then changed their mind. However the text messages between the parties show that the Landlord explicitly said that the payment plan was not accepted.
12. The Landlord is opposed to a repayment plan.
13. We do not find it would be fair in the circumstances to impose a repayment plan for two reasons. First, we are not satisfied that the Tenant would abide by it. This is because the Tenant has made no payments in the last 6 months. Second, the Tenant's proposed repayment will take 4.5 years for the arrears to be paid off. That is not a reasonable amount of time for the Landlord to be without full payment.
14. We have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including that the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would not be unfair to postpone the eviction until July 31, 2023 pursuant to subsection 83(1)(b) of the Act. The Tenant is a single mother of 4 young children all below 8 years old, 1 of which has special needs. The Tenant testified that she has attempted to find a comparable apartment, but in the current rental market, she would have to pay \$3,500 (compared to her current rent of \$2,400), and her only alternative is a shelter. The Tenant would also have to arrange transportation for her children with a new bus arrangement which currently costs \$900 a month. The Tenant also tried to work out a payment plan, despite it being too prejudicial to the Landlord for a 4.5 year repayment term and her tentative ability to pay given her income and expenses as testified to in the hearing. Overall, while we would not grant relief from eviction or impose a payment plan on the Landlord, we do exercise our discretion to grant relief for a postponed eviction to provide the Tenant with time to find new living arrangements. However we have declined to postpone the eviction any further than July 31, 2023 because of the large amount of outstanding arrears and the length of time the Landlord has been without payment.

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:**
 - \$21,786.00 if the payment is made on or before June 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$24,186.00 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 \$17,411.89. 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 \$78.90 per day for the use of the unit starting June 7, 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 3, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 4, 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 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.
 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 August 1, 2023.

June 22, 2023
Date Issued

Elan Shemtov

Elan Shemtov
Member, Landlord and Tenant Board

Amanda Kovats

Amanda Kovats
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 March 2, 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 June 30, 2023

Rent Owing To June 30, 2023	\$21,600.00
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	\$21,786.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before July 31, 2023

Rent Owing To July 31, 2023	\$24,000.00
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	\$24,186.00

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

Rent Owing To Hearing Date	\$19,673.40
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	- \$2,400.00
Less the amount of the interest on the last month's rent deposit	- \$47.51
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	\$17,411.89
Plus daily compensation owing for each day of occupation starting June 7, 2023	\$78.90 (per day)