



Order under Section 69 Residential Tenancies Act, 2006

Citation: Dsouza v Khan, 2023 ONLTB 21817

Date: 2023-03-01

File Number: LTB-L-046827-22

In the matter of: Upper Unit-3443 Queenston Drive
Mississauga, ON L5C 2G5

Between: Kiran D'Souza Landlord

And

Anila Khan and Ayub Muhammad Khan Tenant

Kiran D'Souza (the 'Landlord') applied for an order to terminate the tenancy and evict Anila Khan and Ayub Muhammad Khan (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on February 7, 2023.

The Landlord, the Landlord's Legal Representative Francisco Gomez and the Tenant Ayub Muhammad Khan ('AMK') attended the hearing.

Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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 Tenants were still in possession of the rental unit.
3. The lawful rent is \$2,175.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$71.51. This amount is calculated as follows: \$2,175.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to February 28, 2023 are \$32,625.00.
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 \$2,175.00 from the Tenants 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 \$75.26 is owing to the Tenants for the period from March 15, 2020 to February 7, 2023.

Section 83 Considerations

10. AMK acknowledged the arrears and testified that he had asked the Landlord if he could pay small payments towards the arrears and rent but was refused and the Landlord asked him to vacate the unit.
11. AMK testified that due to the COVID-19 pandemic that he had lost his business and was never able to recover. He testified that he has three children including one son who is sick, although he never elaborated as to what the issue was.
12. AMK testified that he would be willing to pay the rent plus an additional \$500.00 towards the arrears once he gets a job in two months.
13. The Landlord is single mother and two children and a widow and testified that her entire savings is tied to the residential complex and that the lack of rent payments from the Tenant has caused financial turmoil for her family.
14. Based on the evidence of both parties, I find that the continued lack of rent payments by the Tenants has severely prejudiced the Landlord in being able to maintain her financial security. As such, while the Tenants have requested sixty days in order to start making a payment plan or to vacate the unit, I find that a standard 11-day order is reasonable in the circumstances. I do not find the Tenants' repayment plan to be viable or the request to extend the tenancy to be reasonable.
15. 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 March 12, 2023 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

16. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
17. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
1. \$34,986.00 if the payment is made on or before March 12, 2023. See Schedule 1 for the calculation of the amount owing.
18. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after March 12, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
19. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before March 12, 2023.**
20. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$28,886.31. 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 Tenants. See Schedule 1 for the calculation of the amount owing.

21. The Tenants shall also pay the Landlord compensation of \$71.51 per day for the use of the unit starting February 8, 2023 until the date the Tenants move out of the unit.
22. If the Tenants do not pay the Landlord the full amount owing on or before March 12, 2023, the Tenants will start to owe interest. This will be simple interest calculated from March 13, 2023 at 5.00% annually on the balance outstanding.
23. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
24. If the unit is not vacated on or before March 12, 2023, then starting March 13, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
25. 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 March 13, 2023.

March 1, 2023
Date Issued

Jagger Benham
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 September 13, 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before March 12, 2023

Rent Owing To March 31, 2023	\$34,800.00
Application Filing Fee	\$186.00
Total the Tenants must pay to continue the tenancy	\$34,986.00

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

Rent Owing To Hearing Date	\$30,950.57
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$2,175.00
Less the amount of the interest on the last month's rent deposit	- \$75.26
Total amount owing to the Landlord	\$28,886.31
Plus daily compensation owing for each day of occupation starting February 8, 2023	\$71.51 (per day)