



Order under Section 69 Residential Tenancies Act, 2006

Citation: Tang v Boyce, 2024 ONLTB 29088

Date: 2024-04-17

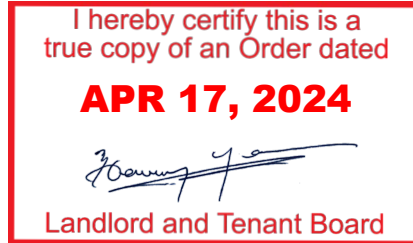
File Number: LTB-L-047732-23

In the matter of: 27 LAMBETH AVE
LONDON ON N6C2L3

Between: Hiu Tang

And

Beverly Boyce
David Given



Landlord

Tenant

Hiu Tang (the 'Landlord') applied for an order to terminate the tenancy and evict Beverly Boyce and David Given (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 5, 2024.

The Landlord and the Tenant attended the hearing.

Preliminary Issue – Is David Given still a tenant:

1. At the hearing, the tenant, David Given (DG), submitted that he is not longer a Tenant. DG testified that he was no longer in possession of the rental unit. At some point, a restraining order was issued against DG and that he was not longer allowed to be near the other tenant. DG testified that this occurred sometime in December. DG testified that he should only be responsible for the arrears up to the end of December.
2. None of the parties disputed about this sequence of events. However, the Landlord disputed that DG is no longer a tenant. The Landlord submitted that DG is still on the lease. There was only one lease signed at the beginning of the tenancy.

Analysis

3. A tenancy can only be terminated pursuant to the *Residential Tenancies Act, 2006* (the 'Act'). Specifically, the relevant section is 37, which stipulates that a tenancy can only be terminated either by agreement or by Notice. The third means of termination is a Board order.
4. The Landlord disagreed and stated that DG is still a tenant. Given his position, it can be said that there is no agreement that the original tenancy was terminated.

5. Further, no Notice was provided by the Tenant to the Landlord seeking a termination of the tenancy. Indeed, as noted below, Beverly Boyce, wishes to remain in the rental unit and so no such Notice was ever served.
6. While DG can no longer attend to the rental unit by order of another court of law, this in and of itself, does not absolve him his liabilities regarding the tenancy. While there are provisions in the act that do contemplate domestic relations between tenants, namely Section 47.2, no such evidence was provided at the hearing to demonstrate this section would apply. The only hint of this was the existence of the restraining order against DG. However, mentioning a restraining order alone does not bring this Section of the Act into force. Instead, the aggrieved tenant must follow the procedures outlined in the Act.
7. In light of this discussion, I find that DG is still a tenant on the lease and is therefore liable for the arrears until the termination of the tenancy. This is in line with Board practice, as in order EAL-92191-20.

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 \$2,255.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$74.14. This amount is calculated as follows: \$2,255.00 x 12, divided by 365 days.
5. The Tenant has paid \$4,240.00 to the Landlord since the application was filed.
6. The rent arrears owing to March 31, 2024 are \$10,775.00.
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 \$2,200.00 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 \$69.92 is owing to the Tenant for the period from November 28, 2022 to March 5, 2024.

Section 83 Considerations

1. The Landlord testified that the Tenant was in fact on a payment plan prior to the hearing. However, the Tenant has been unable to keep up with it. The Landlord testified that the Tenant has breached four times while trying to keep up with payments. The Landlord submitted that the Tenant cannot afford the rent. The Landlord requested a standard order.

2. The Tenant testified that she became injured and so fell behind. The Tenant testified that she was on WSIB her 19 year old son is moving into the rental unit and will assist in paying the rent. The Tenant requested a payment plan.
3. Balancing the interests of both parties, I find that it would be unfair to impose a payment plan. The Tenant testified that her plan is infeasible without the assistance of her son. Her son is not a tenant, and there is no guarantee that he pays. It is, in my view, thus unfair to impose a payment plan that cannot succeed on the abilities of the Tenant alone.
4. While I have decided in favour of the Landlord, I do grant relief to the Tenant in the form of additional time. I exercise my discretion to delay eviction, to either allow the Tenant to bring the account into good standing or to find new accommodations.
10. 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 not be unfair to postpone the eviction until May 31, 2024 pursuant to subsection 83(1)(b) 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:**
 - \$13,216.00 if the payment is made on or before April 30, 2024. See Schedule 1 for the calculation of the amount owing.

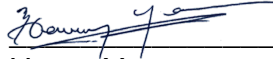
OR

 - \$15,471.00 if the payment is made on or before May 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 May 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 May 31, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$6,806.78. 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 \$74.14 per day for the use of the unit starting March 6, 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 May 31, 2024, the Tenant will start to owe interest. This will be simple interest calculated from June 1, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before May 31, 2024, then starting June 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 June 1, 2024.

April 17, 2024

Date Issued



Henry Yeung

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 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 April 30, 2024

Rent Owing To April 30, 2024	\$17,270.00
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,240.00
Total the Tenant must pay to continue the tenancy	\$13,216.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 31, 2024

Rent Owing To May 31, 2024	\$19,525.00
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,240.00
Total the Tenant must pay to continue the tenancy	\$15,471.00

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

Rent Owing To Hearing Date	\$13,130.70
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,240.00
Less the amount of the last month's rent deposit	- \$2,200.00
Less the amount of the interest on the last month's rent deposit	- \$69.92
Total amount owing to the Landlord	\$6,806.78
Plus daily compensation owing for each day of occupation starting March 6, 2024	\$74.14 (per day)