



Order under Section 69 Residential Tenancies Act, 2006

Citation: Hu v Bahraman, 2024 ONLTB 8691

Date: 2024-02-06

File Number: LTB-L-061044-23

In the matter of: 193 FRANKLIN AVENUE VAUGHAN
ON L4J7L4

Between: Xuebing Hu Landlord

and

Lily Bahraman Tenant

Xuebing Hu (the 'Landlord') applied for an order to terminate the tenancy and evict Lily Bahraman (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on January 23, 2024.

The Landlord's Legal Representative, Jie Situ, the Tenant's Legal Representative, Sassan Emam, and the Tenant attended the hearing. Behzad Pilehver ('BP') testified on behalf of the Tenant.

Determinations:

Preliminary Issues

Adjournment Request

1. At the hearing, BP requested an adjournment so that he could seek legal advice regarding having him removed as a party to the application. Both the Landlord and the Tenant confirmed that they consented to amending the application to remove him as a party and BP confirmed he was not opposing being removed from the application as he believes he never should have been named as a party in the first place.

2. The adjournment request was denied because the arrears are substantial and BP provided no submissions as to how he would be prejudiced if he were not able to obtain legal advice prior to being removed as a party, which is the outcome he was seeking in the first place.

Amending the Application

3. At the hearing, the Landlord's Legal Representative sought to amend the application to remove BP as a tenant and party to the application. The Tenant's Legal Representative consented to this request and BP did not oppose the request. Therefore, the application will be amended to remove BP as a tenant and party to the application.

N4 Notice

4. 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.
5. It was undisputed that as of the hearing date, the Tenant was still in possession of the rental unit.
6. The parties agreed that the lawful rent is \$3,900.00. It is due on the 17th day of each month.
7. Based on the Monthly rent, the daily rent/compensation is \$128.22. This amount is calculated as follows: $\$3,900.00 \times 12$, divided by 365 days.
8. It was undisputed that the Tenant has not made any payments since the application was filed.
9. The rent arrears owing to February 16, 2024 are \$27,300.00.
10. The Landlord did not provide any evidence to support their claim for charges related to NSF cheques. Therefore, I find that the Landlord is not entitled to reimbursement for any administration charges for cheques given by or on behalf of the Tenant which the Landlord alleges were returned NSF.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The parties agreed that there is no last month's rent deposit.

Section 83

13. The Landlord is seeking a standard termination order as the arrears are substantial and the Tenant has not made any payments to the Landlord since she was served with the N4 Notice.

14. The Tenant is seeking to preserve the tenancy. She testified that she stopped paying rent as she believed she had an agreement with the Landlord not to commence legal proceedings if she paid the amount owing set out in the N4 Notice. However, when she paid that amount, a new month of rent had become due, so she did not void the notice and the Landlord subsequently filed the L1 application. The Tenant did not provide a reasonable explanation as to why she refused to make any further payments to the Landlord up to the date of the hearing.
 15. The Tenant testified that she can pay \$5,060.00 towards the arrears, in addition to the full rent each month, until the arrears are paid off. She testified that her current income is approximately \$8,000 to \$10,000 each month from her painting classes that she teaches and that she is in the process of reinstating her real estate license. The Tenant did not provide any supporting documentation, such as a pay stub or T4, to support her statements. While BP testified on behalf of the Tenant, he only testified to her previous income when he was working with his family's company, and he had no firsthand knowledge of her current income.
 16. I find that it would not be fair in the circumstances to impose a repayment plan as I am not satisfied that the Tenant would abide by it for two reasons. First, since the application was filed, the Tenant has not made any payments to the Landlord, despite having full time employment, and she provided no reasonable explanation for failing to do so. Second, this is the Tenant's second time before the Board for rent arrears in the past year. The Tenant's Legal Representative confirmed that on the previous application, she paid the rent in full only after the Landlord had filed an application with the Board.
 17. 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 February 29, 2024 pursuant to subsection 83(1)(b) of the Act.
1. The arrears are substantial and have continued to increase, despite the Tenant having no disruption in income. The Tenant is a single parent to two children. The eviction is being postponed to provide the Tenant with time to find new living arrangements. Considering all of the above, it would be fair to postpone the eviction to February 29, 2024 and it would be unfair to postpone the eviction further.

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:**
 - **\$27,566.00** if the payment is made on or before February 16, 2024. See Schedule 1 for the calculation of the amount owing.

OR

- **\$31,466.00** if the payment is made on or before February 29, 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 February 29, 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 February 29, 2024**
- 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord **\$24,563.54**. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. See Schedule 1 for the calculation of the amount owing.
- 6. The Tenant shall also pay the Landlord compensation of **\$128.22** per day for the use of the unit starting January 24, 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 February 17, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 18, 2024 at 7.00% annually on the balance outstanding.
- 8. If the unit is not vacated on or before February 29, 2024, then starting March 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 March 1, 2024.

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February 6, 2024

Date Issued

Candace Aboussafy

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 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 February 16, 2024

Rent Owing to February 16, 2024	\$27,300.00
Application Filing Fee	\$186.00
NSF Charges	\$80.00
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	\$27,566.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 29, 2024

Rent Owing to March 16, 2024	\$31,200.00
Application Filing Fee	\$186.00
NSF Charges	\$80.00
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	\$31,466.00

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

Rent Owing to Hearing Date	\$24,297.54
Application Filing Fee	\$186.00
NSF Charges	\$80.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00

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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	\$24,563.54
Plus daily compensation owing for each day of occupation starting January 24, 2024	\$128.22 (per day)