



Order under Section 69 Residential Tenancies Act, 2006

Citation: Tiwary v Budhai, 2024 ONLTB 1969

Date: 2024-01-04

File Number: LTB-L-034038-22

In the matter of: 1102, 25 KENSINGTON RD BRAMPTON
ON L6T3W8

Between: Abhishek Tiwary Landlord

And

Gregory Budhai and Desjenai Budhai Tenant

Abhishek Tiwary (the 'Landlord') applied for an order to terminate the tenancy and evict Gregory Budhai and Desjenai Budhai (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Tenant has been persistently late in paying the Tenant's rent, however the Landlord did not pursue this portion of the application.

This application was heard by videoconference on December 21, 2023.

The Landlord the Landlord's legal representative, Sarah Teal, and Desjenai Budhai (DB), on behalf of herself and Gregory Budhai, 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 \$2,100.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$69.04. This amount is calculated as follows: \$2,100.00 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 December 31, 2023 are \$44,100.00. The Tenant is being ordered to pay \$35,000.00, plus the Landlord's costs, which is the Board's maximum monetary jurisdiction. However, if the Tenant chooses to void this order and continue the tenancy they must pay the full amount of arrears owing to the Landlord.
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 \$2,100.00 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 \$98.27 is owing to the Tenant for the period from August 1, 2021 to December 21, 2023.

Relief from Eviction

10. The Tenant requested relief from eviction on the basis that she was 8.5 months pregnant.
11. Although the Tenant did not submit any evidence to support her request for relief from eviction prior to the hearing, I gave her the opportunity to do so during the hearing.
12. The Tenant took a photograph of an ultrasound during the hearing and uploaded it into the Zoom chat function. Although the Tenant's name and gestational age of 34 weeks were indicated on the ultrasound, the photograph was cropped to exclude the date the ultrasound was taken. I requested that the Tenant take and submit another photograph of the entire ultrasound. She said that she did so, but it did not appear in the Zoom chat function. The Tenant subsequently tested the Zoom chat function by submitting a "." Which did appear in the Zoom chat function indicating that it was working properly.
13. The Tenant was also asked to turn on her camera, but she stated that her camera was broken. The Tenant was asked to turn on her back camera. She did so and a dark red fuzzy image appeared on screen and the Tenant said that this camera was broken too.
14. The Landlord's representative demonstrated that the same dark red fuzzy image appeared when she put her thumb over her camera.
15. The Tenant also was unable to explain how she was able to take photographs of the ultrasound and submit them during the hearing while at the same time claiming that her camera did not work.
16. The Tenant then said that she would not turn on her back camera.

17. Based on the information before me, on a balance of probabilities, I find that the Tenant is not 8.5 months pregnant. I draw an adverse inference from her failure to submit the entire ultrasound. Her ability to submit the cropped ultrasound and the subsequent punctuation mark indicates to me that the Zoom function was working properly. I find that her decision to not submit the entire ultrasound was because it did not support her allegation that she is pregnant. In addition, the Tenant's ability to take photographs and submit them during the hearing indicates that her camera was functioning and I draw an adverse inference from her decision to not turn her camera on to show the Board that she was pregnant.
18. 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.
19. I have also considered the circumstances of both parties and find it appropriate to set the eviction date for January 11, 2024.

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:**
 - \$46,386.00 if the payment is made on or before January 11, 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 January 11, 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 January 11, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$35,186.00. This amount includes rent arrears owing up to the date of the hearing, plus the cost of filing the application, less the rent deposit and interest the Landlord owes on the rent deposit, limited by the monetary jurisdiction of the Board. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$69.04 per day for the use of the unit starting December 22, 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 January 11, 2024, the Tenant will start to owe interest. This will be simple interest calculated from January 12, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before January 11, 2024, then starting January 12, 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 January 12, 2024.

January 4, 2024

Date Issued

Richard Ferriss

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 July 12, 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 January 11, 2024

| | |
|--|--------------------|
| Rent Owing To January 31, 2024 | \$46,200.00 |
| 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 | \$46,386.00 |

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

| | |
|--|----------------------|
| Rent Owing To Hearing Date | \$43,449.84 |
| 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 | - \$2,100.00 |
| Less the amount of the interest on the last month's rent deposit | - \$98.27 |
| 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 | \$35,186.00 |
| Plus daily compensation owing for each day of occupation starting December 22, 2023 | \$69.04 (per day) |

2024 ONL TB 1969 (CanLI)