



Order under Section 69 Residential Tenancies Act, 2006

Citation: Bhatt v Neff, 2024 ONLTB 30649

Date: 2024-04-24

File Number: LTB-L-046765-23

In the matter of: B10, 85 BANKSIDE DR
KITCHENER ON N2N3M4

Between: Mahesh Bhatt Landlord

And

Avery Neff Tenant Kyle Kingsley

Mahesh Bhatt (the 'Landlord') applied for an order to terminate the tenancy and evict Avery Neff and Kyle Kingsley (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on April 10, 2024.

The following people attended the hearing:

The Landlord, Namoshi Bhatt.

The Landlord's son, Mahesh Bhatt.

The Landlord's legal representative, Ajmer Singh Mandur.

The Tenant, Kyle Kingsley.

Determinations:

Procedural background

1. This application was first heard on October 25, 2023.

2. On the day of the hearing the Landlord submitted that that arrears outstanding up to the end of October 2023 were \$15,924.00.
3. The Tenant had made no payments since the application was filed with the Board on June 12, 2023.
4. The Tenant made a submission during the hearing that he had to leave to pick up his children at school.
5. Given that the time was near the end of the block, I granted the Tenant his request and adjourned the hearing and issued an interim order for the Tenant to pay the lawful rent as it came due up to the next hearing.
6. The hearing resumed on April 10, 2024.
7. 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.
8. As of the hearing date, the Tenant was still in possession of the rental unit.
9. The lawful rent is \$2,654.00. It is due on the 1st day of each month.
10. Based on the Monthly rent, the daily rent/compensation is \$87.25. This amount is calculated as follows: \$2,654.00 x 12, divided by 365 days.
11. The Tenant has not made any payments since the application was filed.
12. The rent arrears owing to April 14, 2024 are \$29,194.00.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. There is no last month's rent deposit.

Landlord submissions

15. The position of the Landlord is the Tenant has not paid rent since June 2023 and the Landlord has incurred a large amount of debt as a result of the Tenant's non payment of rent to help with the mortgage and payments for the rental unit.
16. The Landlord testified that he had to leave his job in April 2023 to June 2023 to look after his ill father in India and returned to Canada in July 2023. The Landlord testified he returned to India from August 2023 to October 2023 and returned in November 2023 after his father passed, and during his visits to India he was not working and not receiving any other means of income.
17. As of the day of the hearing the Landlord was not employed.

18. The Landlord's wife is working part time.
19. The Landlord testified that he is in deep financial debt due to the Tenant not paying the rent.
20. The Landlord submitted into evidence a copy of a cheque from the Landlord's employer issued to the Landlord to help relieve some of the Landlord's debt.
21. The Landlord testified he has maxed out his line of credit and credit cards in order to carry the mortgage and cover expenses for the rental unit.
22. The Landlord is seeking a standard order for eviction and arrears.

Tenant submissions

23. The Tenant does not dispute the arrears.
24. The Tenant did not dispute he ignored the Board order to pay ongoing lawful rent between the last hearing on October 25, 2023 and the April 10, 2024 hearing.
25. The position of the Tenant is he has two children which require substantial medical needs and the high costs of the medical requirements have prevented him from paying the rent.
26. The Tenant testified that he and his wife have had to travel from Toronto to Hamilton, where one of his children receive treatment.
27. The Tenant submitted financial information for a budget analysis by the Landlord's legal representative.
28. According to the Tenant's submissions the Tenant and his wife have a surplus of income after rent, medical requirements for his children of approximately \$1,455.00 per month before groceries, car payments and utilities.
29. The Tenant claims he does not know why they do not have money left over at the end of each month.
30. The Tenant did not submit any documentary evidence into the Board to support his claim for his children's medical requirement, or any evidence to support the costs associated with the Tenant's claims.
31. Relief from eviction
32. The Tenant requested an extended termination date of June 30, 2024 to allow his children time to finish school.
33. The Tenant testified that he had relatives that could help out and one of them attended the hearing.
34. The Tenant submitted he had parents in the area that could also help, although space was limited to accommodate a family of four.

35. The Tenant also submitted that he had applied to a social agency for financial assistance to help with the arrears, however the Tenant did not submit any documentary evidence to support this claim.
36. The termination of a tenancy is a remedy of last resort and relief should be granted where the tenancy can be saved without overly prejudicing a landlord's interests. If the tenancy cannot be saved then consideration can be given on an extended termination without overly prejudicing a landlord's interests.
37. In this case, based on the evidence and submissions, I weighed the prejudice to the Landlord in considering the Tenant's request for an extended eviction to June 30, 2024. In my view the Tenant has shown no regard for the interim order for rent to be paid and has not paid any rent since June 2023. In the absence of any evidence to support the Tenant's claims and considering the evidence the Landlord has produced to show his financial situation in my view the interests of the Landlord outweigh any consideration for the Tenant's request for an extended eviction. Given the Tenant's history of non payment including his disregard for the interim order and at the risk of the Landlord going further into financial difficulty, I am granting a short delay of eviction to allow the Tenant time to find alternative housing but the Tenant's request for June 30, 2024 is denied.
38. 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 May 15, 2024 pursuant to subsection 83(1)(b) of the Act.
39. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
40. This order contains all reasons for the determinations and order made. No further reasons will be issued.

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:
 - \$32,034.00 if the payment is made on or before May 14, 2024. See Schedule 1 for the calculation of the amount owing.

OR

 - \$34,688.00 if the payment is made on or before May 15, 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 15, 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 15, 2024
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$29,081.75. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$87.25 per day for the use of the unit starting April 11, 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 15, 2024, the Tenant will start to owe interest. This will be simple interest calculated from May 16, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before May 15, 2024, then starting May 16, 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 May 16, 2024.

2024 ONLTB 30649 (CanLI)

April 24, 2024

Date Issued

Greg Brocanier

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 November 16, 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 May 14, 2024

Rent Owing To May 14, 2024	\$31,848.00
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	\$32,034.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 15, 2024

Rent Owing To June 14, 2024	\$34,502.00
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	\$34,688.00

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

Rent Owing To Hearing Date	\$28,895.75
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	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$0.00

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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	\$29,081.75
Plus daily compensation owing for each day of occupation starting April 11, 2024	\$87.25 (per day)