



Order under Section 69 Residential Tenancies Act, 2006

Citation: IMH Pool XIV LP v Silva, 2024 ONLTB 2684

Date: 2024-01-03

File Number: LTB-L-018865-23

In the matter of: G3, 3480 HAVENWOOD DR MISSISSAUGA
ON L4X2M8

Between: IMH Pool XIV LP Landlord

And

Mark Silva, Loreto z. Silva and Anabelle d. Tenant
Silva

IMH Pool XIV LP (the 'Landlord') applied for an order to terminate the tenancy and evict Mark Silva, Loreto z. Silva and Anabelle d. Silva (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 September 14, 2023.

The Landlord and the Tenant attended the hearing. The Landlord was represented by Sofia Enriquez. The Tenant was assisted by his son, John Silva.

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 \$1,757.53. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$57.78. This amount is calculated as follows: \$1,757.53 x 12, divided by 365 days.

5. The Tenant has paid \$11,585.00 to the Landlord since the application was filed.
6. The rent arrears owing to September 30, 2023 are \$3,489.35.
7. The Landlord seeks a standard, voidable eleven-day order.

Tenant's Evidence

8. The Tenant disputes the arrears as claimed by the Landlord. He testified that he has been consistently paying the rent which he believes to be \$1,655.00.
9. The Tenant explains that since 2018, there have been two above-guideline increase orders that have significantly increased the rent. He believes the Landlord has sneakily charged him extra rent under the pretense of the AGI orders.
10. The Tenant testified that while the Landlord's ledger states otherwise, the following is what he believes the rent to be during this period:

Year	Percent increase	Dollar Amount	Total Rent
2019	5.2%	\$80.00	\$1,610.00
2020	2.2%	\$36.00	\$1,646.00
2021			
2022	1.2%	\$20.00	\$1,666.00
2023	2.5%	\$42.00	\$1,708.00

11. The Tenant also confirms that the Landlord's ledger accurately reflects all payments that he has made to the Landlord.
12. On cross-examination, the Tenant stated that he did not know of the rent increase and didn't receive the letters regarding the increase as submitted by the Landlord into evidence.
13. The Tenant submits that if the Board finds he owes the Landlord rent arrears, he is willing to repay them over a 24-month period with an additional \$300.00 on top of the rent each month until the balance is cleared.
14. The Tenant testified that he has lived in the rental unit since November 2013 with the two other tenants. Out of the three Tenants, only one of them is working and supporting the family.
15. In the alternative, the Tenant seeks a delay in eviction of 60 days to find a new place.

ANALYSIS

16. Based on the evidence before the Board, I find the lawful monthly rent to be \$1,757.53 as alleged by the Landlord and the rent arrears owing to September 30, 2023 to be \$3,675.35. I say this for the following reasons.
17. First, as confirmed by the Tenant, the Landlord is not missing any payments on their ledger that were made by the Tenants.
18. Second, looking at the Tenant’s payment history, it cannot be said that the Tenant hasn’t received the notices of rent increase. I say this because each time the rent has increased according to the Landlord’s records, the Tenant has paid a higher amount of rent – on some occasions, it has been the increased amount, and on other occasions, particularly after 2021, it has been an amount lower than the increase but higher than the previous rent.
19. Thirdly, the Tenant’s own evidence is conflicting. While the Tenant states he has been consistently paying \$1,655.00 as rent, his spreadsheet indicates the rent for 2023 to be \$1,708.00 according to his records. Further, at no point during the past five years has the rent been \$1655.00 according to the Tenant’s spreadsheet.
20. Turning to the Landlord’s numbers, it appears the following are the calculations for the increases each year:

Year	Guideline Increase %	Guideline Increased Rent	AboveGuideline Increase %	Maximum Rent	Actual Rent Charged
Nov 2018	1.8%	\$1,526.75	1.45%	\$1,548.89	\$1,548.48
Nov 2019	1.8%	\$1,576.35	3.00%	\$1,623.64	\$1,622.79
Nov 2020	2.2%	\$1,658.49	2.21%	\$1,695.14	\$1,694.35
Nov 2021	0%	\$1,694.35	0%	\$1,694.35	\$1,694.35
Jan 2022	1.2%	\$1,714.68			\$1,714.67
Jan 2023	2.5%	\$1,757.53			\$1,757.53

21. The Tenant’s payment history shows he paid the increases up to 2020 but not the aboveguideline amounts. The Tenant’s payment history also shows an increase paid starting November 2021 when the rent did not increase.

22. Thus, I am not satisfied that the Tenant was unaware of increases – his payment history indicates otherwise. Further, I do not find the Landlord overcharged the Tenant – in fact, in some cases, the Landlord has claimed less than what they were entitled to.
23. With respect to the Tenant's request for relief, I find that a two-year repayment plan would not only be excessive in length but also unrealistic for the Tenants as I find the evidence supports the notion that there is an affordability issue with only one of three tenants working. I find that imposing conditions for a further 24-months would cause distress for the Tenants given their circumstances.
24. Therefore, I find the request for a repayment plan cannot be granted.
25. With respect to relief from eviction, given the length of this tenancy and the Tenant's circumstances, I find a delay of 30 days to be appropriate. This will allow the Tenants to either arrange for funding to pay off what they owe, or secure alternative accommodations.
26. The Landlord is entitled to \$20.00 to reimburse the Landlord for administration charges and \$5.00 for bank fees the Landlord incurred as a result of 1 cheque given by or on behalf of the Tenant which was returned NSF.
27. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
28. The Landlord collected a rent deposit of \$1,628.93 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.
29. Interest on the rent deposit, in the amount of \$28.67 is owing to the Tenant for the period from January 1, 2023 to September 14, 2023.
30. 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 January 31, 2024 pursuant to subsection 83(1)(b) of the Act.
31. This order contains all of the reasons for the decision within it. No further reasons shall 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:**

- \$10,730.47 (*less any amounts already paid to the Landlord after the hearing date*) if the payment is made on or before January 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 January 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 January 31, 2024**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$1,094.14 (*less any amounts already paid to the Landlord after the hearing date*). This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. 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 \$57.78 per day for the use of the unit starting September 15, 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 14, 2024, the Tenant will start to owe interest. This will be simple interest calculated from January 15, 2024 at 7.00% annually on the balance outstanding.
 8. If the unit is not vacated on or before January 31, 2024, then starting February 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 February 1, 2024.

January 3, 2024

Date Issued

Sonia Anwar-Ali

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 August 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 January 31, 2024

Rent Owing To January 31, 2024	\$22,104.47
Application Filing Fee	\$186.00
NSF Charges	\$25.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$11,585.00
Total the Tenant must pay to continue the tenancy	\$10,730.47

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

Rent Owing To Hearing Date	\$14,125.74
Application Filing Fee	\$186.00
NSF Charges	\$25.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$11,585.00
Less the amount of the last month's rent deposit	- \$1,628.93
Less the amount of the interest on the last month's rent deposit	- \$28.67
Total amount owing to the Landlord	\$1,094.14
Plus daily compensation owing for each day of occupation starting September 15, 2023	\$57.78 (per day)