



**Order under Section 69 / 90
Residential Tenancies Act, 2006**

Citation: Toronto Community Housing Corporation v Dyce, 2024 ONLTB 20044

Date: 2024-03-19

File Number: LTB-L-039474-23

In the matter of: 1902, 5005 DUNDAS ST W
ETOBICOKE ON M9A4Y6

Between: Toronto Community Housing Corporation Landlord

And

Althea Dyce Tenant

Toronto Community Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Althea Dyce (the 'Tenant') because:

- the Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex;
- the Tenant has knowingly misrepresented the Tenant's income or the income of other members of the Tenant's family who occupy the unit.

Toronto Community Housing Corporation (the 'Landlord') also applied for an order requiring Althea Dyce (the 'Tenant') to pay the money the Tenant would have been required to pay if the Tenant had not misrepresented their income or that of other members of their household.

This application was heard by videoconference on March 11, 2024.

Only the Landlord's Legal Representative Chelsea Rostant attended the hearing. Kathiresu Cheliyan was called as a witness by the Landlord.

As of 10:01 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. Since the Tenant did not attend and the Landlord was prepared to proceed, the matter proceeded by way of an uncontested hearing pursuant to section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990.

Determinations:

1. The Tenant was in possession of the rental unit on the date the application was filed.
2. On May 5, 2023, the Landlord mailed the Tenant an N6 notice of termination. The notice was deemed served on May 10, 2023 and the termination date in the notice is June 4, 2023. The notice of termination alleges the Tenant lives in a rent-geared-to-income rental unit and that Tenant misrepresented her income. The N6 notice also alleges the Tenant's misrepresentation of her income amounts to fraud and is therefore an illegal act.
3. Pursuant to subsection 60(1) of the *Residential Tenancies Act, 2006* (the 'Act'), a landlord may give a tenant notice to terminate the tenancy if the rental unit is described under subsection 7(1) of the Act and a tenant knowingly and materially misrepresents his or her income or that of other members of the household occupying the rental unit.
4. The Landlord is a social housing provider and falls under the exception set out in subsection 7(1)(2) of the Act.
5. The Tenant was required to annually report her income to the Landlord.
6. The Tenant vacated the rental unit on November 3, 2023. As such, the Landlord's application for eviction is moot. The hearing proceeded to consider only the Landlord's application under section 90 of the *Residential Tenancies Act, 2006* (the Act). This section reads as follows:

If a landlord has a right to give a notice of termination under section 60, the landlord may apply to the Board for an order for the payment of money the tenant would have been required to pay if the tenant had not misrepresented his or her income or that of other members of his or her household, so long as the application is made while the tenant is in possession of the rental unit.

7. I was satisfied the Landlord was entitled to serve the N6 notice on the Tenant and as such is permitted to apply for an order for the payment of money the Tenant would have been required to pay if the Tenant had not misrepresented her income.
8. After hearing some of the Landlord's evidence, the Landlord requested an adjournment to submit further evidence to support the entire time period they were claiming the Tenant had misrepresented her income to the Landlord. The Landlord provided no reasonable explanation as to why this evidence had not been submitted prior to the hearing. The Landlord requested the adjournment well after the hearing began and only after I pointed out my concerns to them. I denied the adjournment, finding there was no reasonable basis for the request.
9. During the hearing, it became clear to me that the Landlord needed time to better organize the evidence they did submit so that the hearing could proceed in an expeditious manner. I held the file down to give the Landlord an opportunity to do this. When I recalled the file, it was after 4:00 p.m. Since there was insufficient time to conclude the hearing, I advised the

Landlord the file would be adjourned to continue on a different date. At this point, the Landlord stated that since the Tenant had already vacated the rental unit, they were only requesting an order for payment that was supported by the evidence they had already provided to this point in the hearing.

10. Kathiresu Chelihan testified he is a private investigator for the Landlord. He conducted an investigation of the income the Tenant had reported to the Landlord in support of the subsidy she had been receiving towards the monthly rent.
11. Mr. Chelihan's evidence was the Tenant provided the Landlord pay stubs from Dalta Terry Agency Cleaning Co. showing her net monthly income in 2021 was \$1,650.67 per month.

The income the Tenant reported in 2021 was used to calculate the amount of subsidy she is entitled to in 2022. The Landlord submitted that due to Covid-19, the Tenant was not required to submit new evidence of income in 2022 for the 2023 subsidy year. The Landlord relied on the income reported by the Tenant in 2021 for the amount of subsidy she received in 2023.
12. Mr. Chelihan, after reviewing these pay stubs, suspected they were fictitious. His suspicions were based on abnormal calculations on the pay stubs. The pay stubs were submitted into evidence and they do show calculations and totals that are not mathematically sound. For example, the year-to-date amounts do not reflect the monthly income being earned. The income deductions are all whole dollar amounts, with no cents being calculated.
13. Based on his suspicions, Mr. Chelihan testified he attended the address of Dalta Terry Agency Cleaning Co. in an attempt to confirm the information contained in the pay stubs submitted by the Tenant. Mr. Chelihan's evidence was the address on the pay stubs is a residential home and he determined Dalta Terry Agency Cleaning Co. does not actually exist. He testified no one was at the address and he could not find the company when he conducted searches.
14. Mr. Chelihan testified that his investigation of the Tenant revealed she has actually been employed as a Community Development Worker by Delta Family Resource Centre since July 15, 2019. She works full time and earns an annual salary of \$47,908.12. The Landlord submitted a letter from Delta Family Resource Centre dated March 9, 2023 confirming the Tenant's employment with them since 2019. The letter is signed by the Operations Manager, Shabina Arfeen and it confirms the Tenant's annual salary.
15. Mr. Chelihan's evidence was the Tenant did not report this employment or annual income to the Landlord at any time since the employment began in July of 2019.
16. Based on the uncontested evidence of the Landlord, I am satisfied on a balance of probabilities the Tenant lived in a rent-geared-to-income unit and since July of 2019, knowingly and materially misrepresented their income to the Landlord by failing to disclose the employment income being earned at Delta Family Resource Centre.

17. I find it appropriate to order the Tenant to pay the Landlord the amount she would have been required to pay if she had not misrepresented her income. Based on the Landlord's evidence, I am satisfied the misrepresentation of income on the part of the Tenant began in 2019 and therefore impacted the monthly rent charged for 2020, 2021, 2022 and 2023.
18. In 2020, the monthly rent charged to the Tenant was \$482.00. The market rent at the time was \$1,270.00. Based on a 12-month calculation the Tenant would have been required to pay an additional \$9,456.00 in 2020, had she not misrepresented her income to the Landlord.
19. In 2021, the monthly rent charged to the Tenant continued to be \$482.00 and the market rent for the rental unit also remained unchanged at \$1,270.00. Based on a 12-month calculation the Tenant would have been required to pay an additional \$9,456.00 in 2021, had she not misrepresented her income to the Landlord.
20. In 2022, the monthly rent charged to the Tenant was \$1,187.00 and the market rent for the unit was \$1,431.00. Based on a 12-month calculation, the Tenant would have been required to pay the Landlord an additional \$2,928.00 in 2022 had she not misrepresented her income.
21. In 2023, the monthly rent charged to the Tenant remained at \$1,187.00 and the market rent also continued to be \$1,431.00. The Tenant vacated the unit on November 3, 2023 and I find it appropriate to calculate the amount owing to that date. The Tenant would have been required to pay the Landlord an additional \$2,440.00 in 2023 for the period ending October 31, 2023, had she not misrepresented her income.
22. The daily amount of the unpaid difference between the monthly rent charged and the market rent is \$8.02. Therefore, the Tenant would have been required to pay the Landlord and additional \$24.06 for the use of the unit from November 1, 2023 until November 3, 2023 had she not misrepresented her income.
23. The Tenant owes the Landlord \$24,288.02 which is the amount the Tenant would have been required to pay if the Tenant had not misrepresented the Tenant's income.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of November 3, 2023.
2. The Tenant shall pay to the Landlord \$24,288.02 which represents compensation for misrepresented income.
3. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. The total amount the Tenant owes the Landlord is \$24,474.02.
5. If the Tenant does not pay the Landlord the full amount owing on or before March 30, 2024, the Tenant will start to owe interest. This will be simple interest calculated from March 31, 2024 at 7.00% annually on the balance outstanding.

March 19, 2024

Date Issued

John Cashmore

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.