



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

Citation: Premax Management Limited v Gowthaman, 2024 ONLTB 6925

Date: 2024-01-22

File Number: LTB-L-068711-22

In the matter of: 705, 3400 EGLINTON AVE E
SCARBOROUGH ON M1J2H8

Between: Premax Management Limited Landlord

And

Sarvana Pavan Gowthaman Tenant

Premax Management Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Sarvana Pavan Gowthaman (the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes.
- the Tenant has been persistently late in paying the Tenant's rent.

This application was heard by videoconference on December 7, 2023.

Only the Landlord's Legal Representative, David Ciobotaru, attended the hearing.

As of 1:35PM, 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. As a result, the hearing proceeded with only the Landlord's evidence.

At 1:42PM, the Tenant signed in with the Moderator. The Tenant subsequently appeared in the hearing room at 1:50PM. The Tenant had gone to find a translator, which was why the Tenant was late. However, as the matter was heard and the Landlord had departed, I did not adjourn the matter.

Determinations:

The L1 application

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 \$1,254.48. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$41.24. This amount is calculated as follows: $\$1,254.48 \times 12$, divided by 365 days.
5. The Tenant has paid \$10,300.00 to the Landlord since the application was filed.
6. The rent arrears owing to December 31, 2023 are \$7,932.32.
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 \$1,125.00 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 \$137.31 is owing to the Tenant for the period from June 15, 2016 to December 7, 2023.

The L2 application

10. The Landlord served the Tenant with a Notice to End Tenancy Early for Persistent Late Payment of Rent (N8 Notice). The Notice was served on November 15, 2023. In the Notice, it is alleged that, at time of serving, the Tenant had paid the rent late 10 times out of 11 months. The Termination Date on the Notice is January 31, 2023. Based on this, I find that the N8 served is valid.
11. The Landlord submitted that, after the Notice was served, the Tenant continued to pay the rent late. The Landlord submitted a ledger to show that the Tenant had paid 11/12 months late in 2023.
12. Based on the Landlord's uncontested evidence, I find that the Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the 1st day of each month. The rent has been paid late 20 times in the past 21 months.

Section 83 considerations

13. The Landlord submitted that there were discussions with the Tenant about payment plans to address the arrears at various times. However, the parties were unable to come to a resolution.
14. 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.

It is ordered that:

The L1 application

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:

- \$9,372.80 if the payment is made on or before January 31, 2024. See Schedule 1 for the calculation of the amount owing.

OR

- \$10,627.28 if the payment is made on or before February 2, 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 2, 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 2, 2024

5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$5,890.21. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. 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 \$41.24 per day for the use of the unit starting December 8, 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 February 2, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 3, 2024 at 7.00% annually on the balance outstanding.

8. If the unit is not vacated on or before February 2, 2024, then starting February 3, 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 3, 2024.

The L2 application

10. If the Tenant pays the arrears and voids the L1 application, the Tenant shall also pay to the Landlord new rent on time and in full as it comes due and owing for the period February 1, 2024 to January 1, 2025.

11. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after December 31, 2023.

January 22, 2024**Date Issued**

Henry Yeung

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 3, 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	\$19,486.80
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$10,300.00
Total the Tenant must pay to continue the tenancy	\$9,372.80

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 2, 2024

Rent Owing To February 29, 2024	\$20,741.28
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$10,300.00
Total the Tenant must pay to continue the tenancy	\$10,627.28

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

Rent Owing To Hearing Date	\$17,266.52
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$10,300.00
Less the amount of the last month's rent deposit	- \$1,125.00
Less the amount of the interest on the last month's rent deposit	- \$137.31
Total amount owing to the Landlord	\$5,890.21
Plus daily compensation owing for each day of occupation starting December 8, 2023	\$41.24 (per day)