



Order under Section 69 Residential Tenancies Act, 2006

Citation: Chan v Robertson, 2024 ONLTB 20112

Date: 2024-03-

20 File Number: LTB-L-
056866-23

In the matter of: 1 LITTLE MINNOW RD
BRAMPTON ON L7A4P4

Between: Alan Chan Landlord
Lap yin So

And

Maya Robertson Tenant
Jessica Davis

Alan Chan and Lap yin So (the 'Landlord') applied for an order to terminate the tenancy and evict Maya Robertson and Jessica Davis (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 Maya Robertson and Jessica Davis (the 'Tenant') because:

- the Tenant has been persistently late in paying the Tenant's rent.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This combined application was heard by videoconference on January 16, 2024.

Only the Landlord's Legal Representative, Pui Sze (Cynthia) Cheung, attended the hearing.

As of 3:07pm 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.

Determinations:

L1 application: non payment of rent

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. The Tenant was in possession on the day the Landlord filed the application with the Board.
3. As of the hearing date, the Tenant was still in possession of the rental unit.
4. The lawful rent is \$2,691.21. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$88.48. This amount is calculated as follows: $\$2,691.21 \times 12$, divided by 365 days.
6. The Tenant has not made any payments since the application was filed.
7. The rent arrears owing to January 31, 2024 are \$21,529.68.
8. The Landlord collected a rent deposit of \$2,691.21 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 \$122.43 is owing to the Tenant for the period from September 15, 2021 to January 16, 2024.
10. Based on the uncontested evidence and submissions before me I find on a balance of probabilities the Tenant owes the Landlord \$21,529.68 in arrears up to the day of the hearing.

L2 Application: persistently late

11. On June 27, 2023, the Landlord gave the Tenant an N8 notice of termination deemed served on June 27, 2023 by mail. The notice of termination contains allegations the Tenant has persistently failed to pay rent on the date it becomes due and payable.
12. The Tenant was in possession of the rental unit on the date the application was filed.
13. The Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the first day of each month. The rent has been paid late 7 times in the past 9 months from October 1, 2022 to June 1, 2023.
14. The Tenant failed to pay any rent for the months of January 1, 2023 and June 1, 2023.

15. Based on the uncontested evidence and submissions before me I find on a balance of probabilities the Tenant has paid the rent consistently late 7 times out of 9 months.

Daily compensation

16. The Tenant was required to pay the Landlord \$9,555.64 in daily compensation for use and occupation of the rental unit for the period from October 1, 2023 to January 16, 2024.
17. Based on the Monthly rent, the daily compensation is \$88.48. This amount is calculated as follows: \$2,691.21 x 12, divided by 365 days.
18. The Landlord collected a rent deposit of \$2,691.21 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$122.43 is owing to the Tenant for the period from September 15, 2021 to January 16, 2024 .
19. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.
20. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Relief from eviction

21. The Landlord's legal representative submitted the Board the Tenant has two young children elementary school age. There are no other occupants in the rental unit with any special needs the Board needs to consider.
22. The Tenant did not attend the hearing in order to provide submissions to the Board for consideration of delay or denial of eviction under section 83. In the absence of any testimony from the Tenant and taking into consideration the Tenant has two young children I find it reasonable to offer the Tenant a short delay of eviction in order to pay the arrears owed to the Landlord or find more suitable housing.
23. 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 April 30, 2024 pursuant to subsection 83(1)(b) of the Act.
24. 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.
25. This order contains all reasons for the determinations and order made. No further reasons will be issued.

It is ordered that:

L1 Application: non payment of rent

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:
 - \$27,098.10 if the payment is made on or before March 31, 2024. See Schedule 1 for the calculation of the amount owing.

OR

- \$29,789.31 if the payment is made on or before April 30, 2024. See Schedule 1 for the calculation of the amount owing.
3. The Tenant shall also pay the Landlord compensation of \$88.48 per day for the use of the unit starting January 17, 2024 until the date the Tenant moves out of the unit.
 4. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
 5. 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 April 30, 2024
 6. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$17,626.51. 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.
 7. 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 April 30, 2024 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
 8. If the Tenant does not pay the Landlord the full amount owing on or before April 30, 2024, the Tenant will start to owe interest. This will be simple interest calculated from May 1, 2024 at 7.00% annually on the balance outstanding.
 9. If the unit is not vacated on or before April 30, 2024, then starting May 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
 10. 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 1, 2024.

L2 Application: persistently late

- 11. If the Tenant voids the L1 application above by March 31, 2024, the Tenant shall also pay the Landlord monthly rent owing on or before the first day of each month commencing April 1, 2024 and continuing thereafter until and including March 31, 2025.
- 12. If the Tenant voids the L1 application above by April 30, 2024, the Tenant shall also pay the Landlord monthly rent owing on or before the first day of each month commencing May 1, 2024 and continuing thereafter until and including April 30, 2024.
- 13. If the Tenant fails to make any of the payments in paragraph 11 or 12, above, the Landlord may apply under section 78 of the Act, within 30 days of the breach and without notice to the Tenant, for an order terminating the tenancy and evicting the Tenant.

2024 ONLTB 20112 (CanLII)

March 20, 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 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 March 31, 2024

Rent Owing To March 31, 2024	\$26,912.10
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	\$27,098.10

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before April 30, 2024

Rent Owing To April 30, 2024	\$29,603.31
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	\$29,789.31

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

Rent Owing To Hearing Date	\$20,254.15
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	- \$2,691.21
Less the amount of the interest on the last month's rent deposit	- \$122.43

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	\$17,626.51
Plus daily compensation owing for each day of occupation starting January 17, 2024	\$88.48 (per day)