



Order under Section 69 Residential Tenancies Act, 2006

Citation: Havcare Investments Inc v Kenya, 2024 ONLTB 60309

Date: 2024-08-22

File Number: LTB-L-099268-23

In the matter of: 712, 500 DAWES RD
Toronto ON M4B2G1

Between: Havcare Investments Inc Landlord

And

Symphani Kenya Amarie Barlcay Tenant

Havcare Investments Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Symphani Kenya Amarie Barlcay (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on May 2, 2024.

The Landlord, the Tenant, and the Tenant's Roommate Akiliah Clark attended the hearing.

Preliminary Issues:

Amendment

1. The parties agreed that the Tenant's name had been incorrectly listed on the application as two different people. The application is amended to list the Tenant as one person, being "Symphani Kenya Amarie Barlcay".

Section 82

2. The Tenant requested to raise maintenance issues under section 82 of the Residential Tenancies Act (2006) (the 'Act').
3. The Tenant did not notify the Landlord that she was intending to raise section 82 issues prior to the hearing. The Tenant did not send any evidence regarding maintenance issues to the Landlord despite being provided the Landlord's email address on the L1 application. The Tenant did not provide a reasonable explanation for failing to provide evidence of her maintenance issues to the Landlord at least seven days prior to the hearing, as required by Rule 19.4 of the Board's Rules of Procedure.
4. Since the Tenant did not comply with the Board's Rule 19.4 relating to disclosure, I declined to consider the Tenant's maintenance issues under section 82 per Rule 19.5.

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 \$1,919.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$63.09. This amount is calculated as follows: \$1,919.00 x 12, divided by 365 days.
5. The Tenant has paid \$3,644.40 to the Landlord since the application was filed.
6. The rent arrears owing to May 31, 2024 are \$13,536.18.
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 \$1,919.00 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 \$64.01 is owing to the Tenant for the period from January 2, 2023 to May 2, 2024.

Relief from eviction

10. The Tenant's roommate, Akiliah Clark ('AC'), testified that she contributes to the rent. The Tenant fell into arrears in September 2023 because AC had to deal with a medical issue and could not work as much as usual. The Tenant, who is studying full-time, is seeking employment but faces difficulty due to most jobs conflicting with her study hours.
11. The Tenant requested relief from eviction through a repayment plan and noted that she had been approved for a bursary and applied to the rent bank for assistance. While this external support may partially reduce the arrears, a significant balance will remain. After reviewing the Tenant's and AC's income and expenses, I find the tenancy unsustainable. Therefore, I now turn my mind to delaying the eviction.
12. The Tenant testified that she will graduate in September and expects to start working then. No additional circumstances were presented to delay or deny the eviction.
13. The Landlord testified that the arrears are substantial and that she relies on the rent to cover property costs and personal expenses. The Landlord is experiencing financial hardship due to the non-payment of rent.
14. 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 grant a short postponement of the eviction until September 16, 2024 pursuant to subsection 83(1)(b) of the Act.

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:**
 - \$19,479.18 if the payment is made on or before August 31, 2024. See Schedule 1 for the calculation of the amount owing.

OR

- \$21,398.18 if the payment is made on or before September 16, 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 September 16, 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 September 16, 2024.**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$9,946.35. 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 \$63.09 per day for the use of the unit starting May 3, 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 September 16, 2024, the Tenant will start to owe interest. This will be simple interest calculated from September 17, 2024 at 7.00% annually on the balance outstanding.
 8. If the unit is not vacated on or before September 16, 2024, then starting September 17, 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 September 17, 2024.

August 22, 2024
Date Issued

 Kate Sinipostolova
 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 April 1, 2025 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 August 31, 2024

Rent Owing To August 31, 2024	\$22,937.58
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,644.40
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	\$19,479.18

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

Rent Owing To September 30, 2024	\$24,856.58
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,644.40
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	\$21,398.18

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

Rent Owing To Hearing Date	\$15,387.76
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,644.40
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	- \$1,919.00
Less the amount of the interest on the last month's rent deposit	- \$64.01
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	\$9,946.35
Plus daily compensation owing for each day of occupation starting May 3, 2024	\$63.09 (per day)