



Order under Section 69 Residential Tenancies Act, 2006

Citation: Choi v Brown, 2024 ONLTB 29395

Date: 2024-04-26

File Number: LTB-L-065520-23

In the matter of: 1203, 744 WONDERLAND RD S
LONDON ON N6K4K3

Between: Chi Ho Choi Landlord
Kam Ming Rebecca Leung

And

Justine Renee Brown Tenant
Immanuel Kedit Macuei

Chi Ho Choi and Kam Ming Rebecca Leung (the 'Landlord') applied for an order to terminate the tenancy and evict Justine Renee Brown and Immanuel Kedit Macuei (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 the Tenant because the Tenant has persistently paid their rent late.

This application was heard by videoconference on July 22, 2024.

Only the Landlord's legal representative Lindsey Branje attended the hearing.

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

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 \$2,400.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$78.90. This amount is calculated as follows: \$2,400.00 x 12, divided by 365 days.

5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to April 30, 2024 are \$26,400.00.
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 \$2,400.00 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 \$108.82 is owing to the Tenant for the period from September 30, 2022 to July 22, 2024.
10. 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.

L2 Application

11. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. However, I find that it would not be unfair to grant relief from eviction and issue a conditional order.
12. The Tenant was in possession of the rental unit on the date the application was filed.
13. On July 4, 2023, the Landlord gave the Tenant an N8 notice of termination deemed served July 9, 2023. The notice of termination contains the following allegations: for the months of February, March, and April 2023 the rent was paid late. For the months of June and July 2023 no rent was paid at all.
14. 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 was paid late times three times in 2023, and another two months, per the N8 Notice, were not paid at all.
15. 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 be not unfair to grant relief from eviction pursuant to subsection 83(1) of the Act subject to the condition that the Tenant pay the rent on time for 112 months if the Tenant voids the L1 portion of this order.
16. Due to the short payment history provided by the Landlord, which includes only three late payments in 2023, the most appropriate remedy in the circumstances would be to order a conditional order for the Tenant to pay their rent on time.

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:**
 - \$26,586.00 if the payment is made on or before April 30, 2024. See Schedule 1 for the calculation of the amount owing.

OR

 - \$28,986.00 if the payment is made on or before May 7, 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 May 7, 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 May 7, 2024.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$22,860.68. 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 \$78.90 per day for the use of the unit starting July 23, 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 May 7, 2024, the Tenant will start to owe interest. This will be simple interest calculated from May 8, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before May 7, 2024, then starting May 8, 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 May 8, 2024.
10. Should the Tenant void the L1 portion of this order in accordance with paragraph two above, the tenancy shall continue on the condition that the Tenant pay their rent on time and in full for the period from June 1, 2024 to May 31, 2025.
11. If the Tenant fails to comply with the conditions set out in paragraph 10, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.

April 26, 2024

Date Issued

Brett Lockwood

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 8, 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.

When the capitalized word "Landlord" is used in this order, it refers to all persons or companies identified as a Landlord at the top of the order. When the capitalized word "Tenant" is used in this order, it refers to all persons identified as a Tenant at the top of the order.

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 April 30, 2024

Rent Owing To April 30, 2024	\$26,400.00
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	\$26,586.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 7, 2024

Rent Owing To May 31, 2024	\$28,800.00
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	\$28,986.00

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

Rent Owing To Hearing Date	\$25,183.50
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	- \$2,400.00
Less the amount of the interest on the last month's rent deposit	- \$108.82
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	\$22,860.68
Plus daily compensation owing for each day of occupation starting July 23, 2024	\$78.90 (per day)

2024 ONL TB 29395 (CanLI)