



Order under Section 69 Residential Tenancies Act, 2006

Citation: Tharmaseelan v Premthas, 2024 ONLTB 14304

Date: 2024-03-26

File Number: LTB-L-067782-23

In the matter of: Unit B - Basement, 65 MOHANDAS DR
MARKHAM ON L3S0E4

Between: Sivagini Tharmaseelan Landlord
Siva gnanam Tharmaseelan

And

Samyuktha Premthas Tenant

Sivagini Tharmaseelan and Sivagnanam Tharmaseelan (the 'Landlord') applied for an order to terminate the tenancy and evict Samyuktha Premthas (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 30, 2024.

The Landlord, the Landlord's representative, Theresian Raphael Selvakumar, the Tenant, and the Tenant's assistant, Alisha Sumithiran, attended the hearing. Ms. Sumithiran provided some assistance with translating the proceedings for the benefit of the Tenant.

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. Rent is due on the 1st day of each month.
4. The parties dispute the amount of the current lawful monthly rent.

5. The Landlord claims the lawful rent is \$1,400.00. The parties agreed that the Tenant paid this amount in monthly rent from January 2022 until June 2023.
6. Nevertheless, the Tenant claims that the lawful rent is only \$1,200 per month based on the following:
 - a. The rent in 2021 was \$1,100 per month, until the Landlord demanded an increase in the rent to \$1,400 per month on December 27, 2021.
 - b. The Tenant thought that this was too much, because it was above the guideline increase. Her evidence was that the Landlord told her that if she did not pay \$1,400 per month, he would evict her in order to enable him to occupy the unit.
 - c. Nevertheless, she paid it because she was about to have a baby and did not want to have to move then.
 - d. The Tenant thinks that the rent should only have increased to \$1,200, in accordance with the guidelines.
 - e. Indeed, the Tenant explains that is the reason she is in arrears. Because of – in her view – overpayments of rent since 2022, she came to the conclusion in June 2023 that she had built up enough of a credit (as a result of the overpayment), that she could stop making regular rental payments as they came due
7. The Landlord does not dispute that the rent rates changed as the Tenant claims. However, the Landlord says that does not affect the lawful rent for two reasons: (a) The guidelines do not apply to this unit, and (b) the Tenant paid the rent for more than 12 months without complaint.
8. S. 6.1 of the Act provides that certain rental units are exempt from the rent increase guidelines. Specifically, the rental unit must be in a building which was not occupied for residential purposes before November 15, 2018. The Landlord testified that the Unit, which is in a house, was built in 2020; the Landlord filed a report from Geowarehouse, confirming that the house was constructed in 2020.
9. S. 136(2) of the Act provides that even if the Landlord demands an illegal rent increase, the increase is deemed to be legal if the Tenant actually pays it for 12 consecutive months, and does not within that time bring an application before the Board to have the increase declared to be illegal. Here, there is no dispute that the Tenant did pay \$1,400 for 12 consecutive months, and that she did not bring an application to challenge that.
10. I accept the Landlord's submission. Either of those reasons is the basis for concluding that the \$1,400 per month is now the lawful rent.
11. Based on the Monthly rent, the daily rent/compensation is \$46.03. This amount is calculated as follows: \$1,400.00 x 12, divided by 365 days.
12. The Tenant has not made any payments since the application was filed.

13. The rent arrears owing to January 31, 2024 are \$9,800.00.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The Landlord collected a rent deposit of \$1,100.00 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.
16. Interest on the rent deposit, in the amount of \$44.47 is owing to the Tenant for the period from December 12, 2020 to January 30, 2024.
17. The Tenant has minor children. She will require time to find a new home for her family. In any event, the Tenant indicated that she is already seeking new housing. 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 May 15, 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:**
 - \$12,786.00 if the payment is made on or before March 31, 2024. See Schedule 1 for the calculation of the amount owing.
 - OR**
 - \$14,186.00 if the payment is made on or before April 30, 2024. See Schedule 1 for the calculation of the amount owing.
 - OR**
 - \$15,586.00 if the payment is made on or before May 15, 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 15, 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 15, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$8,822.43. 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 \$46.03 per day for the use of the unit starting January 31, 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 April 6, 2024, the Tenant will start to owe interest. This will be simple interest calculated from April 7, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before May 15, 2024, then starting May 16, 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 16, 2024.

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

March 26, 2024

Date Issued

Jonathan Rosenstein

Member, Landlord and Tenant Board

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 16, 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

2024 ONLTB 14304 (CanLII)

Rent Owing To May 31, 2024	\$15,400.00
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

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	\$12,600.00
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	\$12,786.00

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	\$14,000.00
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	\$14,186.00

C. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 15, 2024

Total the Tenant must pay to continue the tenancy	\$15,586.00
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D. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$9,780.90
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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	- \$1,100.00
Less the amount of the interest on the last month's rent deposit	- \$44.47
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	\$8,822.43
Plus daily compensation owing for each day of occupation starting January 31, 2024	\$46.03 (per day)