



Order under Section 69 Residential Tenancies Act, 2006

Citation: MLYM Inc c/o Minto Management Ltd v Mabayeke, 2024 ONLTB 10210

Date: 2024-02-02

File Number: LTB-L-077249-23

In the matter of: 1605, 750 YORK MILLS RD TORONTO
ON M3B1X1

Between: MLYM Inc c/o Minto Management Ltd Landlord

And

Abebe Mabayeke Tenant

MLYM Inc c/o Minto Management Ltd (the 'Landlord') applied for an order to terminate the tenancy and evict Abebe Mabayeke (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 29, 2024. The Landlord's representative, Faith McGregor, and the Tenant attended the hearing. The Tenant spoke with Duty Counsel prior to the commencement of the hearing.

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 \$2,710.10. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$89.10. This amount is calculated as follows: \$2,710.10 x 12, divided by 365 days.
5. The Tenant has paid \$2,644.00 to the Landlord since the application was filed.
6. The rent arrears owing to January 31, 2024 are \$19,347.50.

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 \$2,644.00 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 \$5.25 is owing to the Tenant for the period from January 1, 2024 to January 29, 2024.
10. 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 unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
11. The Tenant explained that he fell into arrears after his partner was laid off from work in January 2023 and he was then laid off in August 2023. He stated that his partner got another job in November 2023 but that he is still looking for steady employment. He indicated that his partner now works full-time at a nail salon and brings home approximately \$2,400.00 a month. He acknowledged that his partner does not contribute a 100% of her income to the household expenses.
12. The Tenant testified that he currently receives Employment Insurance ('EI') benefits in the amount of \$1,000.00 a month. His union occasionally finds him temporary jobs that, at times, generate approximately \$1,500.00 in additional income.
13. The Tenant requested the Board exercise its discretion by granting him relief from eviction by way of a conditional order to pay. He proposed paying the Landlord \$500.00 a month until he secures employment.
14. I do not find the Tenant's proposal to be realistic or reasonable. First, the arrears are significant at nearly \$20,000.00. The Tenant's proposal would result in a payment plan over three years, which I find to be overly unfair to the Landlord.
15. Second, the evidence suggests the Tenant's monthly expenses exceed the household income. The lawful rent is over \$2,700.00, which is far greater than the Tenant's current EI benefits. The Tenant's evidence with respect to temporary jobs through his union was vague and inconsistent, leaving me unsure of what, if any, he receives in additional income.
16. While the Tenant has included his partner's income into the household income calculations, the partner did not attend the hearing to provide direct evidence as to the amount she is committed to provide the Tenant to pay the lawful rent and arrears. For these reasons, I am not convinced this is a viable tenancy. I am of the view that granting any form of relief would be prejudicial to the Landlord given the Tenant's inability to pay the arrears or lawful rent.

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:**
 - \$22,243.60 if the payment is made on or before February 13, 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 13, 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 13, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$16,758.05. 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 \$89.10 per day for the use of the unit starting January 30, 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 February 13, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 14, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before February 13, 2024, then starting February 14, 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 14, 2024.

February 2, 2024

Date Issued

Dawn Sullivan

Vice Chair, 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 14, 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 February 13, 2024

Rent Owing To February 29, 2024	\$24,701.60
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,644.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Total the Tenant must pay to continue the tenancy	\$22,243.60

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

Rent Owing To Hearing Date	\$21,865.30
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,644.00
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	- \$2,644.00
Less the amount of the interest on the last month's rent deposit	- \$5.25
Total amount owing to the Landlord	\$16,758.05
Plus daily compensation owing for each day of occupation starting January 30, 2024	\$89.10 (per day)

2024 ONLTB 10210 (CanLII)