



Order under Section 69 Residential Tenancies Act, 2006

Citation: Khan v Khan, 2023 ONLTB 80688

Date: 2023-12-15

File Number: LTB-L-052850-23

In the matter of: 362 LEITCH LANDNG
MILTON ON L9T7M5

Between: Mohammad Idrees Khan Landlords
Uzma Idrees Khan

And

Rizwan Ahmed Khan Tenant

Mohammad Idrees Khan and Uzma Idrees Khan (the 'Landlord') applied for an order to terminate the tenancy and evict Rizwan Ahmed Khan (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 Application).

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year (L2 Application).

This application was heard by videoconference on December 5, 2023. The Landlords, the Landlords' Legal Representative, S. Syed, and the Tenant attended the hearing.

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 \$3,000.00. It is due on the first day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$98.63. This amount is calculated as follows: \$3,000.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. After the application was filed, the Tenant received compensation of \$3,000.00 because the Landlord served him with a Notice to End your Tenancy Because the Landlord, a Purchaser, or a Family Member Requires the Rental Unit (N12).
7. The rent arrears owing to December 31, 2023 are \$18,000.00.

8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. There is no last month's rent deposit.
10. The Tenant testified that he lost his job in June 2023 and is still in search of employment. He plans to pay off the arrears once he obtains employment, borrows money, and secures a payment plan.

L2 Application

11. On June 18, 2023, the Landlords gave the Tenant a Notice to End your Tenancy Because the Landlord, a Purchaser, or a Family Member Requires the Rental Unit (N12) with a termination date of August 31, 2023. The Landlords claimed in the notice that they require vacant possession of the rental unit for the purpose of residential occupation.
12. The Landlord testified that they gave the Tenant an initial N12 notice in January 2023 but following an agreement that the tenancy would terminate on June 30, 2023, the Tenant failed to vacate the unit. The Landlords who were out of the country and preparing to move to Canada, had no place of their own when they arrived on July 24, 2023.
13. The Landlords provided as evidence, copies of their airline tickets and documentary evidence of their child's admission to a higher institution, which they had previously shown to the Tenant at his request.
14. The Landlords, who intend to reside in the unit for at least one year, and their five children currently reside in the basement unit of a friend of the family.
15. The Tenant testified that he doubts that the Landlords intend to move into the unit because they cannot afford it. The Landlords have since the start of the tenancy in August 2018 informed him every year of their intention to terminate the tenancy but always changed their minds.

Relief from Eviction

16. Although the Landlords in previous years may have changed their minds about occupying the rental unit, they provided prove showing that in furtherance of the plan to move into the unit, they travelled to Canada on July 24, 2023, and all seven Members of their family are currently residing in a friend's basement unit.
17. I am satisfied from the evidence that the Landlord in good faith requires possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.
18. The Landlords compensated the Tenants an amount equal to one month's rent, \$3,000.00 by waiving the rent for the month of August 2023.
19. As for the L1 application, the Tenant is unemployed and has not paid any rent in months. The Tenant's offer to pay the arrears once he obtains a job or borrows money, is unreliable given the lack of a specific date for payments.

20. I have considered all 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 January 5, 2024 pursuant to subsection 83(1)(b) of the Act. As the tenancy terminates on the strength of both applications, the Tenant has no option to void the L1 application.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before January 5, 2024.
2. The Tenant shall pay to the Landlord \$15,679.15. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
3. The Tenant shall also pay the Landlord compensation of \$98.63 per day for the use of the unit starting December 6, 2023 until the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlord the full amount owing on or before December 19, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 20, 2023 at 7.00% annually on the balance outstanding.
5. If the unit is not vacated on or before January 5, 2024, then starting January 6, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 January 6, 2024.

December 15, 2023

Date Issued

Jitewa Edu

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 July 6, 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 December 31, 2023

Rent Owing To December 31, 2023	\$21,000.00
Application Filing Fee	\$186.00
Less the amount of the compensation that the Tenant is entitled to	- \$3,000.00
Total the Tenant must pay to continue the tenancy	\$18,186.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before January 5, 2024

Rent Owing To January 31, 2024	\$24,000.00
Application Filing Fee	\$186.00
Less the amount of the compensation that the Tenant is entitled to	- \$3,000.00
Total the Tenant must pay to continue the tenancy	\$21,186.00

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

Rent Owing To Hearing Date	\$18,493.15
Application Filing Fee	\$186.00
Less the amount of the compensation that the Tenant is entitled to	- \$3,000.00
Total amount owing to the Landlord	\$15,679.15
Plus daily compensation owing for each day of occupation starting December 6, 2023	\$98.63 (per day)