



Order under Section 69 Residential Tenancies Act, 2006

Citation: Vyacheslav v Samiee, 2023 ONLTB 79383

Date: 2023-12-13

File Number:
LTB-L-000055-23

In the matter of: 1209, 85 NORTH PARK RD THORNHILL
ON L4J0H9

Between: Vyacheslav Khrapkin Landlord

And

Yasaman Samiee Tenant

Vyacheslav Khrapkin (the 'Landlord') applied for an order to terminate the tenancy and evict Yasaman Samiee (the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes;
- the Tenant have been persistently late in paying the Tenant's rent.

This application was heard by videoconference on November 27, 2023.

The Landlord, the Landlord's Legal Representative E. Vasilieva and the Tenant attended 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 \$1,545.00. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$50.79. This amount is calculated as follows: \$1,545.00 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 November 30, 2023 are \$20,085.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.
9. The Tenant agreed that she owed the arrears and testified that she stopped paying rent in November 2022.

L2 Application – Persistent Late Payment of Rent

10. On December 20, 2022, the Landlord gave the Tenant an N8 notice of termination that was deemed served on December 25, 2022. The notice of termination alleged that the Tenant did not pay rent on the first of the month from May to August 2022. The notice also alleged no payments for November and December 2022.
11. Again, the Tenant agreed that she had paid rent late for those four months in 2022.
12. 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 has been paid late 4 times within 6 months from May until August 2022 as set out in the N8 Notice.

Relief from Eviction

13. 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 February 29, 2023 pursuant to subsection 83(1)(b) of the Act.
14. The Tenant has lived in the rental unit for 8 years and is a single mother to a daughter. She testified that she was a good tenant until she was diagnosed with a serious illness that requires chemotherapy treatment. Since her diagnosis, she hasn't been able to work consistently and when she does not work, she does not get paid, and as a result, she has not paid rent since November 2022.
15. The Tenant asked for relief under s. 83(1) of Act. Specifically, the Tenant requested a payment plan. She stated that she could pay \$100.00 per month towards the arrears and relief to pay only part of her rent each month. In the alternative, she asked for a delay in eviction until the end of June 2024 when her daughter finishes school.
16. The Landlord seeks a standard eviction order.
17. The Landlord testified about his circumstances. He testified that the Tenant's arrears have placed a large financial burden on him and his family. He and his wife are the breadwinners for their family of 5, which includes their daughter and elderly parents. He

has had to take out a loan to cover the costs of the rental property and that his family is now struggling financially.

18. The Landlord also testified that this situation has caused him a lot of stress. He sought medical attention for heart issues and a sleep disorder that he attributes to this situation. He also stated that he is suffering from ongoing gastritis.
19. The Landlord's representative testified that the Landlord had attempted to negotiate a payment plan with the Tenant in November 2022, when the Landlord offered to accept a partial payment of the rent. She testified that the Tenant ignored this offer.
20. The Landlord tendered a string of e-mails and text messages of attempts he had made to contact the Tenant about the arrears. I read through these messages and did not see any attempt to negotiate a payment plan. One text message sent on Thursday November 10 did offer to take a partial payment in November, but it later said payment in full was required by the end of the month. This was reiterated in an e-mail sent on December 11, 2022. This offer isn't to negotiate repayment of arrears, it was a one time offer to pay rent late. The remainder of the messages contain demands to pay all outstanding rent and to leave immediately.
21. Based on the Tenant's monthly income and expenses, she is already over budget without paying \$100.00 towards the arrears. She owes over \$20,000.00 in arrears. At \$100.00 per month, it would take almost 17 years to pay the arrears. While the Tenant testified that she would look for a second job to increase the payments, I cannot make an order based on an uncertainty.
22. Further, I have no jurisdiction to reduce the Tenant's monthly rent payments.
23. While I am sympathetic to the Tenant's situation, she can no longer afford this rental unit. Her arrears are substantial and she hasn't made any payments for over a year. Her proposed payment plan is not sustainable with her current income and she has testified that she cannot afford to pay the monthly rent in its entirety.
24. Based on all of these circumstances, I find that a delay in eviction until February 29, 2024 would not be unfair to the Landlord. This will allow the Tenant time to find new accommodations for herself and her daughter.

It is ordered that:

L1 Application – Arrears of Rent

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:**

- \$21,816.00 if the payment is made on or before December 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$23,361.00 if the payment is made on or before January 31, 2024. See Schedule 1 for the calculation of the amount owing.

OR

- \$24,906.00 if the payment is made on or before February 29, 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 29, 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 29, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$20,097.33. 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.
6. The Tenant shall also pay the Landlord compensation of \$50.79 per day for the use of the unit starting November 28, 2023 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 December 24, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 25, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before February 29, 2024, then starting March 1, 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 March 1, 2024.

L2 Application – Persistent Late Payment

1. If the Tenant voids the L1 application for arrears of rent set out in paragraph 2 above, the tenancy between the Landlord and the Tenant is still terminated due to persistent late payment of rent. The Tenant must move out of the rental unit on or before February 29, 2024.

2. If the unit is not vacated on or before February 29, 2024, then starting March 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. 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 March 1, 2024.

December 13, 2023

Date Issued

Angela Long

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 September 1, 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	\$21,630.00
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	\$21,816.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before January 31, 2024

Rent Owing To January 31, 2024	\$23,175.00
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	\$23,361.00

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

Rent Owing To Hearing Date	\$19,911.33
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	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord	\$20,097.33
Plus daily compensation owing for each day of occupation starting November 28, 2023	\$50.79 (per day)

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