



Order under Section 69 Residential Tenancies Act, 2006

Citation: Toor v Byfield, 2023 ONLTB 77821

Date: 2023-12-08

File Number: LTB-L-022790-22

In the matter of: 37 Gemma Place
Mississauga ON L6Z0J5

Between: Ramneek Singh Toor Landlord

And

Kimberly Socielle Byfield Tenant Jaqmalleon Emmanuel Williams

Ramneek Singh Toor (the 'Landlord') applied for an order to terminate the tenancy and evict Kimberly Socielle Byfield and Jaqmalleon Emmanuel Williams (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on November 20, 2023.

The Landlord's Legal Representative and the Tenant Kimberly Byfield attended the hearing.

Determinations:

1. The Tenant raised the issue that the Landlord did not serve them with evidence they are relying on for this application. The Landlord's Legal Representative submitted that he uploaded the documents on TOP which means that the Tenants were served as per the Board's requirements. I do not find that the Tenants agreed to disclosure through TOP which means that the evidence was not sent to the Tenants as required as per Board Rule 19.
2. The evidence in question is an L1/L9 update sheet which simply provides an update on any rent the Tenant has paid after the application was filed, bank statements of the Landlord showing that rent has not been paid, a ledger of payments made by the Tenants since December 2021, a copy of the intended agreement between the parties dated

September 27, 2023 and evidence for NSF cheques. I do not find that any of this evidence will affect the outcome of this application negatively if excluded.

3. 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.
4. As of the hearing date, the Tenant was still in possession of the rental unit.
5. The lawful rent is \$2,700.00. It is due on the 1st day of each month.
6. Based on the Monthly rent, the daily rent/compensation is \$88.77. This amount is calculated as follows: \$2,700.00 x 12, divided by 365 days.
7. The Tenant has paid \$34,800.00 to the Landlord since the application was filed.
8. The Landlord claims that the rent arrears owing to November 30, 2023 are \$30,000.00.
9. The Tenant stated that she does not owe the Landlord \$30,000.00 and that they only owe the Landlord the amount of \$13,500.00 as reflected on the N4. She testified that they have made a payment of \$10,500.00 to the Landlord which is not reflected by the Landlord. The Landlord's Legal Representative stated that the \$34,800.00 payment that the Landlord has shown as rent paid in the L1/L9 update sheet includes this payment. After deducting that the payment the Tenants still owe the Landlord \$30,000.00.
10. The Tenant also testified that the parties had agreed on an amount of \$13,500.00 as rent arrears and based on that they paid the Landlord the \$10,500.00 and were supposed to pay him \$500.00 additional every month. The Landlord's Legal Representative stated that the Landlord is a simple man and this agreement that was made was probably made by him not realising what he was getting into. In any event, this agreement was not fulfilled by the Tenants since they did not pay the Landlord either rent or the additional \$500.00 as rent arrears payment.
11. Based on the evidence before me, I do not find that the agreement that the parties made amongst each other has much value before me today. The agreement is not enforceable and secondly the Tenants themselves breached the agreement by not making the rent arrears payments.
12. While a landlord bears the burden of establishing rent arrears in an application such as this, the tenant typically bears the burden of establishing that a particular payment or payments were made, particularly where that payment is disputed. I would have expected the Tenant to produce some documentary evidence in support of their claim that they made additional payments. In the absence of a satisfactory explanation as to why they did not produce what I would expect to be readily available evidence, I decline to find that additional payments were made besides the \$10,500.00. Instead, I accept the Landlord's evidence regarding the amount of rent arrears.

13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. The Landlord collected a rent deposit of \$2,700.00 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.
15. Interest on the rent deposit, in the amount of \$131.89 is owing to the Tenant for the period from June 1, 2020 to November 20, 2023.

Section 83 considerations

16. 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.
17. The rent arrears are high. The Tenant was unable to establish any reason why they have not been able to pay rent to the Landlord on a regular basis. She only asked for time to make a lumpsum payment by December 13, 2023.

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:**
 - \$32,886.00 if the payment is made on or before December 19, 2023. 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 December 19, 2023 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 December 19, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$26,429.51. 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 \$88.77 per day for the use of the unit starting November 21, 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 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.
8. If the unit is not vacated on or before December 19, 2023, then starting December 20, 2023, 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 December 20, 2023.

December 8, 2023

Date Issued

Sheena Brar

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 June 20, 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 19, 2023

Rent Owing To December 31, 2023	\$67,500.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$34,800.00
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	\$32,886.00

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

Rent Owing To Hearing Date	\$63,875.40
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$34,800.00
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	- \$2,700.00
Less the amount of the interest on the last month's rent deposit	- \$131.89
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	\$26,429.51
Plus daily compensation owing for each day of occupation starting November 21, 2023	\$88.77 (per day)