



Order under Section 69 Residential Tenancies Act, 2006

Citation: Wang v Collett, 2023 ONLTB 75265

Date: 2023-11-24

File Number: LTB-L-046120-23

In the matter of: 160 TAYLOR DR
BARRIE ON L4N8L1

Between: Ling Zhi Wang and Shi Hui Yu Landlord

And

Sherry-Lyn Collett Tenant

Ling Zhi Wang and Shi Hui Yu (the 'Landlords') applied for an order to terminate the tenancy and evict Sherry-Lyn Collett (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 7, 2023.

Only the Landlord Ling Zhi Wang and the Landlord's Legal Representative E. Page attended the hearing.

As of 10:34am, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. The Landlords served the Tenant with a valid Notice to End Tenancy Early for Nonpayment 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 \$2,125.00. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$69.86. This amount is calculated as follows: \$2,125.00 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 \$32,002.00.
7. The Landlords incurred costs of \$186.00 for filing the application and are entitled to reimbursement of those costs.
8. At the hearing, I asked the Landlords' representative if a rent deposit had been collected from the Tenant. The application stated that no rent deposit had been collected and I was confirming that fact for the record. The Landlords' representative testified that there was no rent deposit. The Landlord, Ms. Wang, interjected and testified that the Tenant had paid a rent deposit. The Landlords' representative then stated that there had been a rent deposit but it had been used in the past.
9. I asked again about the existence of a rent deposit and the Landlords' representative submitted that there was no rent deposit and that her client was confused. I then asked the Landlord, Ms. Wang, directly if the Tenant had paid a rent deposit. Ms. Wang testified that the Tenant did pay a rent deposit of \$2,100.00 but that she had used it to pay the outstanding rent because the Tenant didn't pay rent for a long time. I asked when the Tenant paid the rent deposit to the Landlords and the Landlords' representative testified it was paid on July 1, 2019.
10. As I explained at the hearing, landlords are not permitted to apply a rent deposit for any month other than the last month of tenancy. This is because s. 106(10) of the Act says:

A landlord shall apply a rent deposit that a tenant has paid to the landlord or to a former landlord in payment of the rent for the last rent period before the tenancy terminates.
11. The use of the word "shall" in s. 106(10) means that this requirement is mandatory.
12. Given the direct evidence from the Landlord, Ms. Wang, I am satisfied that the Landlords are holding a rent deposit in the amount of \$2,100.00. While this may mean that the Tenant is in arrears for an additional month's rent, the Landlords did not ask to amend the application to include it.
13. Interest on the rent deposit, in the amount of \$135.08 is owing to the Tenant for the period from July 1, 2019 to November 7, 2023.
14. 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. The Landlords' representative testified that both she and the Landlord have made multiple attempts to contact the Tenant to arrange for repayment of the rent arrears, however the Tenant has not responded to either of them. Based on the unopposed evidence before me, I find that the Landlords did attempt to negotiate a payment plan with the Tenant but received no response.

15. The Landlords' representative testified that she was not aware of any circumstances that would cause me to delay or deny the eviction.

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:**
 - \$32,188.00 if the payment is made on or before November 30, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$34,313.00 if the payment is made on or before December 5, 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 5, 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 5, 2023**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$28,316.94. 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 \$69.86 per day for the use of the unit starting November 8, 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 5, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 6, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 5, 2023, then starting December 6, 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 6, 2023.

November 24, 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 June 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 November 30, 2023

Rent Owing To November 30, 2023	\$32,002.00
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	\$32,188.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 5, 2023

Rent Owing To December 31, 2023	\$34,127.00
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	\$34,313.00

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

Rent Owing To Hearing Date	\$30,366.02
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	- \$2,100.00
Less the amount of the interest on the last month's rent deposit	- \$135.08
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	\$28,316.94
Plus daily compensation owing for each day of occupation starting November 8, 2023	\$69.86 (per day)

2023 ONL/TB 75265 (CanLII)