



Order under Section 69 Residential Tenancies Act, 2006

Citation: Bhowal v Fuller, 2023 ONLTB 75602

Date: 2023-11-15

File Number: LTB-L-000926-21

In the matter of: 611 Pharmacy Avenue
Toronto ON M1L3H1

Between: Ajit Bhowal Landlord

And

Shelina Fuller Tenant

Ajit Bhowal (the 'Landlord') applied for an order to terminate the tenancy and evict Shelina Fuller (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 6, 2023.

Only the Landlord and the Landlord's legal representative C. Preddie attended the hearing.

As of 9:21AM, 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 Landlord's legal representative sent a copy of the Board's notice of hearing to the Tenant by email on August 31, 2023. The Board sent a copy of the notice of hearing to the Tenant by email on September 8, 2023. At the hearing, the Landlord's legal representative submitted a November 2, 2023 email message the Tenant sent to the representative. The Tenant confirms receiving the electronic notice of hearing.
2. Based on the evidence introduced at the November 6, 2023 hearing, I find the Tenant received the Board's notice of hearing and was aware of the proceeding.
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 \$2,000.00. It is due on the 1st day of each month.
6. Based on the Monthly rent, the daily rent/compensation is \$65.75. This amount is calculated as follows: \$2,000.00 x 12, divided by 365 days.

7. The Tenant has not made any payments since the application was filed.
8. The rent arrears owing to November 30, 2023 are \$50,000.00.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. The Landlord collected a rent deposit of \$2,000.00 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.
11. On May 30, 2023, the Landlord's legal representative proposed a payment plan to resolve the Landlord's application by email. The Tenant did not respond to the proposed plan. Although the Landlord's legal representative spoke directly with the Tenant after May 30, 2023, the representative did not raise the proposed payment plan and did not discuss resolving the Landlord's application. Instead, the Landlord's legal representative only reminded the Tenant of the scheduled Board hearing date. The Landlord's legal representative explained at the November 5, 2023 hearing that he wanted to ensure the Tenant was aware of the hearing date.
12. In the circumstances, I find the Landlord's legal representative's omission to discuss resolving the Landlord's application with the Tenant after May 30, 2023 was not reasonable in the circumstances. The legal representative's May 30, 2023 invitation to treat alone, without further action such as confirming that the Tenant in fact received and was aware of the May 30, 2023 email message, does not represent a good faith effort to resolve the matter.
13. I note, however, that subsection 83(6) of the *Residential Tenancies Act, 2006* (the 'Act') does not require the Board to take specific action in the circumstances.
14. I have considered all of the other disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenant did not attend the hearing to give evidence of their circumstances, or to contest the Landlord's application to terminate the tenancy and evict the Tenant. I note that the Landlord proved the Tenant owes more than the Board's monetary jurisdiction, if the tenancy is terminated. The Tenant has not made any payment since the application was filed, and has accordingly not demonstrated a willingness or ability to pay the amount the Tenant owes. Denying the application, or postponing the eviction enforcement date by more than 11 days, would be unfair in the circumstances.

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:**
 - \$50,186.00 if the payment is made on or before November 26, 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 November 26, 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 November 26, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$35,186.00. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application, subject to the Board's monetary jurisdiction. 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, but do not affect the total amount the Tenant must pay if the Tenant vacates the rental unit because of the Board's monetary jurisdiction.
6. If the Tenant does not pay the Landlord the full amount owing on or before November 26, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 27, 2023 at 7.00% annually on the balance outstanding.
7. If the unit is not vacated on or before November 26, 2023, then starting November 27, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. 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 November 27, 2023.

November 15, 2023

Date Issued

Harry Cho

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 May 27, 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 26, 2023

Rent Owing To November 30, 2023	\$50,000.00
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	\$50,186.00

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

Rent Owing To Hearing Date	\$50,000.00
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 of the last month's rent deposit	- \$2,000.00
Less the amount of the interest on the last month's rent deposit	- \$46.20
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 (subject to the Board's monetary jurisdiction)	\$35,186.00