



Order under Section 78(6) Residential Tenancies Act, 2006

Citation: IMH POOL XV LP v Gong, 2023 ONLTB 75022

Date: 2023-11-15

File Number: LTB-L-047276-23

In the matter of: 801, 65 SILVER SPRINGS BLVD
SCARBOROUGH ON M1V1W1

Between: IMH POOL XV LP Landlord

And

Jie Gong Tenant

IMH POOL XV LP (the 'Landlord') applied for an order to terminate the tenancy and evict Jie Gong (the 'Tenant') because the Tenant failed to meet a condition specified in the order issued by the Board on May 23, 2023 with respect to application LTB-L-028901-22.

A hearing was held by videoconference on September 28, 2023 to consider this application.

The Landlord and the Tenant attended the hearing. The Landlord was represented by Michelle Forrester. The Tenant was assisted by her friend, Fred Jones. The Tenant consulted with Tenant Duty Counsel prior to the hearing.

The Tenant was able to participate during the hearing by using "Google Translation" which assisted in translating between the English and Mandarin languages.

Determinations:

1. For the reasons that follow, the tenancy between the Landlord and the Tenant is terminated on November 30, 2023.

L4 APPLICATION

2. The order provides that the Landlord can apply to the Board under section 78 of the Residential Tenancies Act, 2006 (the 'Act') without notice to the Tenant to terminate the tenancy and evict the Tenant if the Tenant does not meet certain condition(s) in the order. This application was filed within 30 days of the breach.

The breach

3. Based on the evidence before the Board, I find the Tenant failed to pay the rent for June 2023 on or before June 1, 2023 and the Tenant failed to pay the arrears of \$1,690.00 on or before June 1, 2023. I say this because while the Tenant initially disputed the breach, she later testified that the funds had been taken by her boyfriend so she did not have enough to make the payments.

4. The Tenant testified that she did not communicate with the Landlord since the last hearing.
5. Since then, the Tenant was not able to make payments for the period July – September 2023 because she didn't understand that she had to make double payments each month.
6. The Tenant seeks a chance to repay the arrears and maintain her tenancy and proposes to pay her rent on time and \$1,000.00 for the next 11 months until the arrears are paid in full. The Tenant maintains that she can afford the rental unit.
7. The Tenant submits that she moved into the rental unit three years ago and is the sole occupant of the unit. She testified that she cannot move out as she has no family to rely upon. The Tenant states she pays her rent each month and is unclear why the Landlord wants her to leave.
8. The Landlord submits that at the hearing in May 2023, the parties consented to an order with terms that were proposed by the Tenant. Since then, the Tenant has not made any payments towards the arrears but has continued to pay the rent for the months of July – September 2023.
9. The Landlord seeks a termination of the tenancy and an order for the arrears as the Tenant has accrued more arrears than on the original hearing date.
10. The Landlord seeks that their application is granted, and a termination of the tenancy is ordered.

ANALYSIS

11. Based on the submissions before the Board, I am satisfied that the Tenant was in breach of the order when she failed to pay the rent for June and the arrears payment on or before June 1, 2023.
12. While I am mindful that the Tenant has made the rent payments going forward, aside from June's rent, no payments have been made towards the rent arrears. I am not convinced the Tenant is able to afford the rental unit as she asserts.
13. Repayment plans are granted to allow a tenant to catch up on the arrears while continuing to pay their monthly rent. Based on the evidence before the Board, it appears that a repayment plan seems to be unrealistic and will only put the Tenant in further financial distress
14. Thus, I am not inclined to grant another repayment plan and must consider when to terminate this tenancy.

Arrears owing

15. The previous application includes a request for an order for the payment of arrears of rent and the requires the Tenant to make payments by specific due dates. Accordingly, in addition to eviction, the Landlord is entitled to request an order for the payment of arrears owing.

16. The Tenant was ordered to pay \$9,066.41 for rent arrears and the application filing fee in the previous order. The amount that is still owing from that is \$9,066.41 and that amount is included in this order. This order replaces order LTB-L-028901-22.
17. Since the date of the previous order, the Tenant has failed to pay the full rent that became owing for the period from June 1, 2023 to September 28, 2023.

The rent deposit

18. The Landlord collected a rent deposit of \$1,636.79 from the Tenant and this deposit is still being held by the Landlord.
19. Interest on the rent deposit is owing to the Tenant for the period from January 1, 2023 to September 28, 2023 in the amount of \$30.38.
20. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenant is required to pay.

Daily compensation

21. The Landlord is entitled to daily compensation from starting September 22, 2023 until the date the Tenant moves out of the unit at a daily rate of \$54.56. This amount is calculated as follows: \$1,659.47 x 12 months, divided by 365 days.

Section 83 considerations

22. Given the length of this tenancy and the Tenant's personal circumstances, I find a brief delay in eviction is warranted.
23. 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 November 30, 2023 pursuant to subsection 83(1)(b) of the Act.
24. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. Order LTB-L-028901-22 is cancelled.
2. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before November 30, 2023.
3. If the unit is not vacated on or before November 30, 2023, then starting December 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

- 4. 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 1, 2023.
- 5. The Tenant shall pay to the Landlord \$8,974.59*. This amount represents the rent owing up to September 28, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.
- 6. The Tenant shall also pay to the Landlord \$54.56 per day for compensation for the use of the unit starting September 29, 2023 to 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 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.

November 15, 2023
Date Issued

 Sonia Anwar-Ali
 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.

* Refer to the attached Summary of Calculations Table.

SUMMARY OF CALCULATIONS TABLE**Amount the Tenant must pay the Landlord:**

Reason for amount owing	Period	Amount
Amount of arrears owing from previous	Up to May 31, 2023	\$9,066.41
New Arrears	from June 1, 2023 to September 28, 2023	\$6,528.76
Payment by the Tenant		-\$4,978.41
New NSF cheque charges and related administration charges		\$25.00
Less the rent deposit:		-\$1,636.79
Less the interest owing on the rent deposit	to September 28, 2023	-\$30.38
Total the Tenant must pay the Landlord:		\$8,974.59

2023 ONLTB 75022 (CanLI)