



Order under Section 69 Residential Tenancies Act, 2006

Citation: Qureshi v Domalla, 2023 ONLTB 72927

Date: 2023-11-13

File Number: LTB-L-049112-22

In the matter of: 202, 156 BRANDON AVE TORONTO
ON M6H2E4

Between: Shahjahan Qureshi Landlord

And

Shiva Kumar Domalla and Swathi Tenants Chandupatla

Shahjahan Qureshi (the 'Landlord') applied for an order to terminate the tenancy and evict Shiva Kumar Domalla and Swathi Chandupatla (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on October 23, 2023.

The Landlord, co-owner Mike Salem, and Landlord's son Fahad Qureshi attended the hearing. The Tenants also attended the hearing.

Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenants 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 Tenants were still in possession of the rental unit.
3. The lawful rent is \$1,281.25. It is due on the 1st day of each month. Based on the Monthly rent, the daily rent/compensation is \$42.12. This amount is calculated as follows:
 $\$1,281.25 \times 12$, divided by 365 days.

4. It was undisputed by the parties that the Tenants have not made any payments since the application was filed. Furthermore, the parties agreed that the rent arrears owing to October 31, 2023 are \$20,125.00.
5. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
6. The Landlord collected a rent deposit of \$1,250.00 from the Tenants 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.
7. Interest on the rent deposit, in the amount of \$43.34 is owing to the Tenants for the period from November 27, 2021 to October 23, 2023.

Relief from Eviction

8. At the hearing the Tenants provided evidence of their circumstances and requested that their tenancy be preserved. Specifically, the Tenants testified that they encountered financial difficulties and could not pay the rent for the period of time prior to the N4 Notice through to the hearing date. This is a span of sixteen (16) months.
9. The Tenant testified that he had lost his job during this 16 month period and the female Tenant had had a child and was remaining home with the child. As she was home with the child she no longer had an income and did not intend to return to work in the immediate future. The Tenants testified that they had a reduction of income and would find it difficult to move due to this. As a result of their financial difficulties, the Tenants sought a payment plan for the arrears of rent.
10. The Landlord testified that he is facing financial hardship due to the non-payment of rent by the Tenants as the arrears of rent are very significant. The amount continues to grow and he feels the Tenants have not shown any good faith towards maintaining the tenancy as they have failed to make any payments since June 2022 and have testified that their income has been reduced.
11. We 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 Tenants, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
12. We find that the failure to make any payment since June 2022 and the Tenants' evidence on the on-going income reduction, demonstrates that the Tenants cannot afford to reside in the rental unit as they do not have the income to pay the rent as it falls due or the rent arrears outstanding. When asked about their plans to make the payments moving forward, the Tenants' answers were vague and failed to demonstrate the ability to pay. As a result, we find that it would be unfair to grant relief from eviction as the Landlord faces financial hardship and the Tenants failed to demonstrate the ability to maintain a payment plan.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenant voids this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$21,592.25 if the payment is made on or before December 1, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after December 1, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before December 1, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$18,705.17. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$42.12 per day for the use of the unit starting October 24, 2023 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before December 1, 2023, the Tenants will start to owe interest. This will be simple interest calculated from December 2, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 1, 2023, then starting December 2, 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 2, 2023.

November 20, 2023

Date Issued

Brett Lockwood

Member, Landlord and Tenant Board

Nicola Mulima

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 2, 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before November 24, 2023

Rent Owing To November 30, 2023	\$21,406.25
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$21,592.25

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

Rent Owing To Hearing Date	\$19,812.51
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00

Less the amount of the last month's rent deposit	- \$1,250.00
Less the amount of the interest on the last month's rent deposit	- \$43.34
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total amount owing to the Landlord	\$18,705.17
Plus daily compensation owing for each day of occupation starting October 24, 2023	\$42.12 (per day)