



Order under Sections 69 and 88.2 Residential Tenancies Act, 2006

Citation: Xi v Phillips, 2023 ONLTB 72614

Date: 2023-11-01

File Number: LTB-L-073226-22

In the matter of: 502 ALEAH CRES
KESWICK ON L4P1X5

Between: Sheeley Li Xi and GPS Law Landlord

And

Michael Phillips Tenant

Sheeley Li Xi and GPS Law (the 'Landlord') applied for an order to terminate the tenancy and evict Michael Phillips (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. **This is the L1 application.**

The Landlord also applied for an order to terminate the tenancy and evict Tenant for the following reasons:

- because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant; and
- because the Tenant has been persistently late paying the rent.
- **This is the L2 application.**

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket costs that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

These applications were heard by videoconference on October 25, 2023.

The Landlord and the Tenant attended the hearing. The Landlord was represented by Matthew Simpson. The Tenant consulted with Tenant Duty Counsel prior to the hearing.

Determinations:

PRELIMINARY REQUEST TO WITHDRAW

1. At the hearing, the Landlord sought to withdraw the portion of the L2 application as it related to their N5 notice of termination and the damage claim pursuant to section 89(1) of the *Residential Tenancies Act, 2006* in the amount of \$610.00.
2. The Tenant did not object.
3. In accordance with subsection 200(4) of the *Residential Tenancies Act, 2006*, I consent to the withdrawal of the application.

L2 APPLICATION

4. By way of background, this is a month-to-month tenancy in which rent is due on the first of the month in the amount of \$3,214.00. This tenancy began seven years ago, and the Tenant is the sole occupant of the rental unit.
5. The Landlord's L2 application is based on a N8 notice of termination, served to the Tenant on November 4, 2022 with a termination date of January 31, 2023 pursuant to subsection 58(1) of the Act. The notice alleges the Tenant has been persistently late in making the rent payments for the period between 2019 to 2022. In 2022, the Tenant has been late in paying the rent for the months of January, February, April, July, August and November.
6. The Landlord's evidence was, since the N8 notice of termination was served, the Tenant continued to pay the rent late, and later, not at all, for the period December 2022 to October 2023.
7. The Landlord seeks a termination of the tenancy as the Tenant's failure to pay the rent on time has resulted in the Landlord having to sustain the Tenant's home without rental income and this has been difficult since she is a single parent with two children.
8. The Tenant does not dispute the Landlord's assertion that the rent was paid late for the period stipulated, however, the Tenant submits the parties had an agreement that the rent would be paid by the Friday of the week where the 1st came.
9. The Tenant does not wish to move out and is agreeable to a conditional order whereby he would commit to paying the rent on time for a one-year period to save his tenancy.
10. The Landlord opposes any conditional order as the Tenant's own evidence confirms he does not have the available funds to pay the rent on time.

11. Based on the evidence before the Board, I find the Tenant has been persistently late in paying the rent for most of the period between January 2022 to October 2023. While the Tenant asserts there was an agreement to pay by the Friday of the week of the 1st, aside from his assertion, no other evidence was submitted to corroborate this assertion.
12. I do not find a conditional order would be appropriate under the circumstances as the evidence does not suggest the Tenant is able to pay the rent on time going forward. I say this based on his evidence that his monthly income is less than half of the lawful monthly rent. I find that a conditional order would result in further breaches and put the Tenant in financial distress.
13. In the alternative, the Tenant sought a delay in eviction to November 30, 2023 so that he could have the time to secure accommodation elsewhere.
14. Given the length of this tenancy and the Tenant's personal circumstances combined with the fact that there are significant arrears owing, I find a short delay to November 30, 2023 to be appropriate.

L1 APPLICATION

15. 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.
16. As of the hearing date, the Tenant was still in possession of the rental unit.
17. The lawful rent is \$3,214.00. It is due on the 1st day of each month.
18. Based on the Monthly rent, the daily rent/compensation is \$105.67. This amount is calculated as follows: \$3,214.00 x 12, divided by 365 days.
19. The Tenant has paid \$9,736.00 to the Landlord since the application was filed.
20. The rent arrears owing to October 31, 2023 are \$26,598.00.
21. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
22. The Landlord seeks an order for the arrears and a termination of the tenancy.
23. The Tenant does not dispute the arrears as claimed by the Landlord.
24. He explains that his rent arrears have accrued from the pandemic and while he has tried his best to make payments, things got worse. The Tenant seeks to move out but cannot do so anytime soon. As such, the Tenant seeks to preserve his tenancy and proposes a repayment plan whereby he would pay \$1,000.00 towards the arrears until they are paid in full.

25. The Tenant submits that he would try to pay the rent on time but that he got paid on Fridays which is when he remitted payment to the Landlord for the rent, in the past. But he endeavoured to pay the rent by the first, if ordered.
26. As of the hearing date, the Tenant submits his monthly rent was approximately \$1,500.00 which included employment income and income from his roommate.
27. The Landlord opposed the repayment plan proposed by the Tenant as it was excessive in length and the arrears were significant. Further, the Landlord was not confident in the Tenant's ability to pay given that his income was less than half of the monthly rent.

ANALYSIS

28. Based on the submissions before the Board, I find the arrears and costs owing to October 31, 2023 total \$26,784.00. This is uncontested by the parties.
29. With respect to the Tenant's request for relief, I share the concerns of the Landlord. The Tenant's own evidence confirms that his monthly income is insufficient to pay the rent alone. It is unclear how the Tenant will be able to make an additional payment of \$1,000.00 towards the arrears going forward.
30. Repayment plans are granted to allow a tenant to catch up on the arrears while continuing to pay their monthly rent. Here, based on the Tenant's own statements, a repayment plan would seem to be unrealistic and put him in further financial distress, resulting in further debt being accrued.
31. As such, I am not inclined to grant the Tenant the repayment plan being proposed.
32. Based on my finding on the L2 application, the tenancy is terminated and so there can be no opportunity to void termination by paying the outstanding arrears claimed on the L1 application.
33. The Landlord collected a rent deposit of \$1,500.00 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.
34. Interest on the rent deposit, in the amount of \$49.52 is owing to the Tenant for the period from July 1, 2022 to October 25, 2023.
35. 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 not be unfair to postpone the eviction until November 30, 2023 pursuant to subsection 83(1)(b) of the Act.

Compensation for Unpaid Utilities

36. As part of the Landlord's L2 application, a claim pursuant to section 88.2 was also included for the water, electricity and gas utilities that had accrued throughout the tenancy.
37. The Landlord's evidence was, the Tenant was responsible to pay the utilities under the tenancy agreement. Up until 2019, these bills were paid on time and in full. While the accounts were registered in the Landlord's name, the Landlord would send a picture of the bill to the Tenant via text and email and the Tenant would pay the bill directly.
38. The Landlord testified that when the Tenant began to accrue these arrears, she reached out to the Tenant but did not receive any response. To ensure the property maintained its supply of these utilities, the Landlord stepped in to pay the bills; the Landlord testified that it has been challenging for her to sustain two households on one income.
39. The Landlord seeks reimbursement of the following utilities that she has paid on the Tenant's behalf; the water bill which was added to her property taxes, in the amount of \$4,194.80; the electricity bill in the amount of \$2,389.31 and the gas bill in the amount of \$619.20 for a grant total of \$7,203.31.
40. The Tenant does not dispute the fact that the utilities have not been paid. The Tenant submits that sometimes the Landlord sent him the incorrect bill but when he raised this issue with the Landlord, it was immediately rectified within a short period of time.
41. The Tenant submits the accrual of these utilities were due to the financial distress he experienced during and after the pandemic.
42. No further submissions were made by the Tenant in regard to repayment of this amount.
43. Based on the evidence before the Board, I find the Tenant failed to pay the gas, electricity and water utility bills that they were required to pay under the terms of the tenancy agreement.
44. I am satisfied the Landlord has incurred reasonable out-of-pocket expenses of \$7,203.31 as a result of the Tenant's failure to pay gas, electricity and water costs.
45. An order shall issue requiring this amount to be paid by the Tenant to the Landlord.
46. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. 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.
2. 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.
3. 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.

4. The Tenant shall pay to the Landlord \$24,662.23. 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.
5. The Tenant shall also pay the Landlord compensation of \$105.67 per day for the use of the unit starting October 26, 2023 until the date the Tenant moves out of the unit.
6. The Tenant shall pay to the Landlord \$7,203.31, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs.
7. The total amount owing under this order is \$31,865.54.
8. If the Tenant does not pay the Landlord the full amount owing on or before November 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 1, 2023 at 7.00% annually on the balance outstanding.

November 1, 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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on June 1, 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 if the tenancy is terminated

Rent Owing To Hearing Date	\$35,761.75
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$9,736.00
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	- \$1,500.00
Less the amount of the interest on the last month's rent deposit	- \$49.52
Total amount owing to the Landlord	\$24,662.23
Plus daily compensation owing for each day of occupation starting October 26, 2023	\$105.67 (per day)

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