



Order under Section 69 Residential Tenancies Act, 2006

Citation: Lin v Palandoken, 2023 ONLTB 71678

Date: 2023-11-01

File Number: LTB-L-050835-23

In the matter of: 44 ROCKLAND DR
NORTH YORK ON M2M2Y9

Between: Jing Lin Landlord

And

Ali Cenk Palandoken and Yaprak Palandoken Tenants

Jing Lin (the 'Landlord') applied for an order to terminate the tenancy and evict Ali Cenk Palandoken and Yaprak Palandoken (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on August 31, 2023.

The Landlord's representative H Shen, the Landlord's legal representative RW Yu, and the Tenant A Palandoken attended the hearing. Interpreter J Yu also attended for translation support for the Landlord's representative.

Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment 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 \$3,250.00. It is due on the 15th day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$106.85. This amount is calculated as follows: \$3,250.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to September 14, 2023 are \$37,947.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

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8. The Landlord collected a rent deposit of \$3,250.00 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.
9. Interest on the rent deposit, in the amount of \$155.87 is owing to the Tenants for the period from March 25, 2021 to August 31, 2023.

The Board's Monetary Jurisdiction

10. The amount claimed by the Landlord exceeds the monetary jurisdiction of the Board. Subsection 207(1) of the Residential Tenancies Act, 2006, S.O. 2006, c.17 (the 'Act'), limits the monetary jurisdiction of the Board to that of the Small Claims court, which is currently \$35,000.00.
11. The Landlord was advised of the Board's monetary limitation and that section 207 (3) of the Act provides if a party obtains a Board order at the maximum amount all rights of the party in excess of the Board's monetary jurisdiction are extinguished. The Landlord acknowledged that the maximum the Board can order the Tenant to pay is \$35,000.00.
12. As the Small Claims Court has the authority to award costs on top of its monetary jurisdiction, the LTB has the same authority. (see *Wu v. Adler*, 2019 CanLII 94002 (ON SCSM)).
13. In the recent decision of *Galaxy Real Estate Core Ontario LP v. Kirpichova et al.*, 2023 ONSC 4356, the Divisional Court confirmed that the Board's monetary jurisdiction does not apply to the amount the Tenants must pay if they choose to void the order and continue the tenancy in accordance with section 74(4) of the Act. Therefore, the Tenant must pay the full arrears owing, plus the Landlord's costs, if they want to void the order and continue this tenancy.

The Tenants' Renovations to the Unit

14. The Tenants have not paid rent because the Landlord has also served them with an N12 Notice to End the Tenancy and they believe that the Landlord owes them for the costs of the renovations to the unit.
15. The Tenant A Palandoken testified that they rented the unit through a real estate agent, J Jiang, and that the Tenants intended to reside in the rental unit for 5 years. He said that he made a verbal agreement with J Jiang that the Tenants would renovate the rental unit. In July, 2022, the Landlord's representative H Shen saw the house and indicated to the Tenant AP that the fair market value of the rental unit had increased due to the renovations that the Tenants had completed.
16. The Tenants submitted as evidence copies of invoices detailing the work done to the unit. These invoices were from Sun Electric and Red Rose Plumbing. The Tenant AP testified that Sun Electric and Red Rose Plumbing are the same company and have the same employees. He is general contractor and hires these two companies. The invoices presented were paid in cash.
17. The invoice from Sun Electric, in the amount of \$3,898.50 was dated June 21, 2021. The invoice details work done but does not detail the specific work completed, there is only a

total amount due. The invoice does not contain a mailing address for the company. The invoice includes an amount for HST but does not include the company's HST number.

18. The invoice from Red Rose Plumbing, in the amount of \$3,616.00 was dated June 5, 2021. The invoice details work done but does not detail the specific work completed, there is only a total amount due. The invoice contains the same mailing address for the company as the Tenants' address. The invoice includes an amount for HST but does not include the company's HST number.
19. The Tenants also submitted as evidence an invoice from Yaprak Palandoken, one of the Tenants, detailing work done in the unit.
20. The invoice from Yaprak Palandoken, in the amount of \$46,330.00 was dated October 12, 2021. The invoice details work done but does not detail the specific work completed, there is only a total amount due. The invoice includes an amount for HST but does not include an HST number.
21. Under cross-examination, the Tenant AP testified that he did not make the Landlord aware of the original state of the unit prior to beginning renovations, and that the Landlord did not give the Tenants permission to renovate the unit nor did the Tenants give the Landlord a quote for the proposed renovation.
22. The Landlord submitted as evidence a rental ledger that detailed credits made in favour of the Tenants for the monthly rent for April, May and June, 2022. The amounts were communicated to the Tenants in a text message on March 18, 2022 as credits for work done in the rental unit.
23. The Tenants did not dispute that there was no rent charged for the months of April, May and June, 2022.

Analysis

24. The Tenants did not obtain permission from the Landlord to begin the renovations, nor did they inform the Landlord that the cost of renovations would be set-off against the rent that was payable for the unit. While the Tenants may have performed some renovations, the invoices provided by the Tenants are lacking in detail and visually look very similar to each other and I do not afford them weight as I consider the evidence before me.
25. The Landlord has provided evidence that shows that the Tenants were in fact compensated three months rent for the renovations that were done.
26. Based on the evidence before me, and on the balance of probabilities, I find that the Tenants have been compensated for the work done in the unit and further relief is not warranted.

Relief from Eviction

27. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$44,633.00 if the payment is made on or before November 12, 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 November 12, 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 November 12, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$33,293.58. 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 \$106.85 per day for the use of the unit starting September 1, 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 November 12, 2023, the Tenants will start to owe interest. This will be simple interest calculated from November 13, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 12, 2023, then starting November 13, 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 November 13, 2023.

November 1, 2023**Date Issued**

 Heather Kenny
 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 May 13, 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 12, 2023

Rent Owing To November 14, 2023	\$44,447.00
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	\$44,633.00

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

Rent Owing To Hearing Date	\$36,513.45
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	- \$3,250.00
Less the amount of the interest on the last month's rent deposit	- \$155.87
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	\$33,293.58
Plus daily compensation owing for each day of occupation starting September 1, 2023	\$106.85 (per day)