



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Khan v Kay, 2023 ONLTB 71433

Date: 2023-11-01

File Number: LTB-L-040056-23

In the matter of: 24, 4823 THOMAS ALTON BLVD BURLINGTON
ON L7M0V2

Between: Shabhana Khan Landlord

And

Janet Patricia Kay Tenant

Shabhana Khan (the 'Landlord') applied for an order to terminate the tenancy and evict Janet Patricia Kay (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on August 30, 2023.

The Landlord, the Landlord's Legal Representative, Jorge Steinmetz, and the Tenant's Agent, Nelson Kay, attended the hearing. The Tenant's Agent is the Tenant's spouse and was provided with the opportunity to speak to Tenant Duty Counsel to which they declined.

Determinations:

Preliminary Issues:

1. At the hearing, the Tenant's Agent, raised two preliminary issues. The first issue relates to the validity of the N4 notice of termination ('N4 Notice') in which he submitted the Landlord included additional information on the N4 Notice which stated: See Order on File Number: LTB-L-004526-22. The Tenant's Agent submitted this additional information caused the Tenant to be confused as to what she was expected to pay to void the N4 Notice.
2. As explained at the hearing, the N4 Notice clearly set out that the amount to void the N4 Notice is \$2,250.00 and this was included on both pages of the N4 Notice. The additional

information added to the N4 Notice was irrelevant and the arrears of rent shown on the N4 Notice was clear on its face. As a result, I am satisfied the N4 Notice served upon the Tenant is valid.

3. The second issue raised by the Tenant's Agent relates to the Tenant receiving the notice of hearing. The Tenant's Agent submitted the Tenant did not receive the notice of hearing and only learned of the hearing on August 28, 2023.
4. The Landlord's Legal Representative submitted that the L1/L9 Information Update Sheet ('L1/L9 Update') was mailed to the Tenant on August 17, 2023 and was also emailed to the Tenant on August 23, 2023. The Tenant's Agent did not dispute receiving the L1/L9 Update form prior to August 28, 2023.
5. In the Board's record, it shows the notice of hearing was mailed to the Tenant on June 27, 2023 and this notice of hearing was not returned to the Board by Canada Post.
6. On August 29, 2023, the Tenant accessed the Tribunals Ontario Portal and uploaded a request to add a representative and on August 30, 2023 uploaded a signed representation authorization. The Landlord's email to the Tenant did not contain any hearing information, only the attachment of the L1/L9 Update. Considering that the Tenant accessed the Tribunals Ontario Portal, knew the hearing date, VC line, dial-in number, PIN, and signed into the hearing on time, I am satisfied on a balance of probabilities that the Tenant received proper notice of this hearing.

L1 Application

7. 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.
8. As of the hearing date, the Tenant was still in possession of the rental unit.
9. The lawful rent is \$2,250.00. It is due on the 1st day of each month.
10. Based on the Monthly rent, the daily rent/compensation is \$73.97. This amount is calculated as follows: $\$2,250.00 \times 12$, divided by 365 days.
11. The Tenant has not made any payments since the application was filed.
12. The rent arrears owing to August 31, 2023 are \$11,250.00.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. There is no last month's rent deposit.

Section 83 considerations

15. The Tenant's Agent submitted the Tenant is seeking a postponement of termination of the tenancy and eviction of 90 days. He submitted the Tenant has no physical disability and has no children however she is a senior and would need time to find new accommodation. In the alternative, he proposed a six-month payment plan in which the Tenant would pay the monthly rent and an additional \$1,906.00 towards the rent arrears. He further submitted the Tenant's monthly income is \$5,000.00.
16. The Landlord's Legal Representative submitted that the Landlord is opposed to a postponement of eviction and a payment plan. He submitted the Landlord is seeking a standard 11-day eviction order and added the rent arrears are substantial and the Landlord has a previous order for arrears only against the Tenant in the amount of \$35,000.00. He further submitted the Tenant has not paid rent in almost two years and further delay is highly prejudicial to the Landlord.
17. 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. I say this because although the Tenant proposed to pay an additional \$1,906.00 on top of the monthly rent to catch up on the rent arrears, this proposal is not one that can be afforded by the Tenant given her monthly income. In my view and in consideration of all the circumstances, the tenancy is no longer viable and delaying the eviction would be highly prejudicial to the Landlord in light of the substantial rent arrears owing.

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:**
 - \$18,186.00 if the payment is made on or before November 12, 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 12, 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 12, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$11,405.10. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$73.97 per day for the use of the unit starting August 31, 2023 until 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 12, 2023, the Tenant 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

Susan Priest

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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before November 12, 2023

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|--|--------------------|
| Rent Owing To November 30, 2023 | \$18,000.00 |
| 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 |
| Total the Tenant must pay to continue the tenancy | \$18,186.00 |

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

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|--|----------------------|
| Rent Owing To Hearing Date | \$11,219.10 |
| 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 | - \$0.00 |
| Less the amount of the interest on the last month's rent deposit | - \$0.00 |
| Total amount owing to the Landlord | \$11,405.10 |
| Plus daily compensation owing for each day of occupation starting August 31, 2023 | \$73.97 (per day) |