



Order under Section 69 Residential Tenancies Act, 2006

Citation: Nguyen v Piekarska, 2023 ONLTB 70104

Date: 2023-10-25

File Number: LTB-L-014525-23

In the matter of: 39 YORKVIEW DR
ETOBICOKE ON M8Z2G1

Between: Phoung Kim Nguyen Landlord

And

Krystyna Anna Piekarska Tenant

Phoung Kim Nguyen (the 'Landlord') applied for an order to terminate the tenancy and evict Krystyna Anna Piekarska (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 19, 2023.

The Landlord's Legal Representative Elaine Page, the Landlord, Landlord support Phung Kim Nguyen, the Tenant, and Tenant support Greta Francis (a neighbour who is a licensee of the Law Society but attending as support only) attended the hearing. The Tenant declined to speak with Tenant Duty Counsel but the Tenant support indicated that the Tenant was aware of the possible outcomes of the hearing. The parties attempted to resolve the issues with the assistance of the mediator but were unable to reach an agreement.

Determinations:

1. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$2,400.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$78.90. This amount is calculated as follows: \$2,400.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The parties agreed that the rent arrears owing to June 30, 2023 are \$31,200.00. The Landlord's Legal Representative noted that the April 2023 rent was waived as compensation for an N12 notice of termination.

7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$2,400.00 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.
9. Interest on the rent deposit, in the amount of \$246.25 is owing to the Tenant for the period from March 1, 2017 to June 19, 2023.
10. This tenancy was ordered terminated effective April 15, 2023 by the Board's order LTB-L-023619-22 dated March 17, 2023 and upheld on review. The Landlord's Legal Representative indicated that the Tenant has filed an appeal of that order to the Divisional Court.

Board's monetary jurisdiction

11. Section 207(1) of the Act provides that the Board cannot order a person to pay more than \$35,000.00.
12. This order terminates the tenancy and requires the Tenant to pay the rent arrears outstanding plus the cost of filing the application, and less the rent deposit being held by the Landlord. This amount, which the Tenant is being ordered to pay in accordance with subsection 74(3) of the Act, is under the Board's monetary jurisdiction of \$35,000.00.
13. The order also provides that the Tenant can choose to void the order in accordance with subsection 74(4) of the Act by paying the following amounts before the order is enforceable:
 - (a) the amount of rent that is in arrears under the tenancy agreement;
 - (b) the amount of additional rent that would have been due under the tenancy agreement as at the date of payment by the tenant had notice of termination not been given;
 - (c) the amount of NSF cheque charges charged by financial institutions to the landlord in respect of cheques tendered to the landlord by or on behalf of the tenant, as allowed by the Board in an application by the landlord under section 87;
 - (d) the amount of administration charges payable by the tenant for the NSF cheques, as allowed by the Board in an application by the landlord under section 87; and
 - (e) the costs ordered by the Board
14. The amount the Tenant must pay to void the order is over \$35,000.00. As the Tenant is not legally required to pay the amount necessary to void the order, I find that the monetary jurisdiction contained in section 207(1) of the Act does not apply to this portion of the order.
15. The Tenant proposed a plan by which she would pay the arrears in the following manner:

- July 15, 2023: \$13,386.00
- August 1, 2023: \$5,600.00
- August 20, 2023: \$11,386.00

16. The Tenant's evidence is that there is a Federal Court lawsuit pending and she expects to receive a settlement, and that she will receive a pension payment of \$16,000.00 before July 2023.
17. The Landlord noted that there was no documentary evidence to support the Tenant's assertions that she can make the payments as indicated and that she has not paid rent in over a year.
18. 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. The Tenant has not paid rent in over a year to the date of the hearing. The arrears were approaching the monetary jurisdiction of the Board as of the date of the hearing. It would be unfair to the Landlord to delay further.

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** (*less any payments made since the date of the hearing*):
 - \$40,986.00 if the payment is made on or before October 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$43,386.00 if the payment is made on or before November 5, 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 5, 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 5, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$27,838.85. 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.
6. The Tenant shall also pay the Landlord compensation of \$78.90 per day for the use of the unit starting June 20, 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 5, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 6, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 5, 2023, then starting November 6, 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 6, 2023.

October 25, 2023

Date Issued

Margo den Haan
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 6, 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 October 31, 2023

Rent Owing To October 31, 2023 <i>(less any payments made since the date of the hearing)</i>	\$41,172.00
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
Total the Tenant must pay to continue the tenancy <i>(less any payments made since the date of the hearing)</i>	\$40,986.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before November 5, 2023

Rent Owing To November 30, 2023 <i>(less any payments made since the date of the hearing)</i>	\$43,200.00
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
Total the Tenant must pay to continue the tenancy <i>(less any payments made since the date of the hearing)</i>	\$43,386.00

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

Rent Owing To Hearing Date	\$30,299.10
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 of the last month's rent deposit	- \$2,400.00
Less the amount of the interest on the last month's rent deposit	- \$246.25
Total amount owing to the Landlord	\$27,838.85
Plus daily compensation owing for each day of occupation starting June 20, 2023	\$78.90 (per day)