



Order under Section 69 Residential Tenancies Act, 2006

Citation: Li v Naso, 2023 ONLTB 69185

Date: 2023-10-20

File Number: LTB-L-054970-23

In the matter of: 818, 85 WOOD ST TORONTO
ON M4Y0E8

Between: Guilian Li and Jia Hua Yan Landlord

And

Souriya Naso Tenant

Guilian Li and Jia Hua Yan (the 'Landlord') applied for an order to terminate the tenancy and evict Souriya Naso (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on September 25, 2023.

The Landlord and the Tenant attended the hearing.

Determinations:

Preliminary: Tenant Requested Adjournment

1. The Tenant requested an adjournment to have her T2 and T6 applications heard with the Landlord's L1 application.

Analysis and Finding

2. The Board's Practice Direction on adjournments states:

Adjournment to Hear Applications Together

If the respondent asks for adjournment for this reason at the beginning of the hearing this request will generally only be granted if the respondent's application will affect the outcome of the application being considered.

3. In my view the Tenant's T2 and T6 applications are not required to be heard with the Landlord's L1 application. While there may be offsets of remedy granted to the Tenant in her applications, any decision made by the member at the Tenant's hearing can be applied after the L1 application decision in this order.
4. The fact that the Tenant owes arrears to the Landlord is independent from any remedy the Tenant may be awarded at the hearing for the T2 and T6 application.
5. Further the Tenant received the notice of hearing for the Landlord's L1 application more than two months prior to the hearing date. While I acknowledge the Tenant has the ability to make her request to adjourn to hear the applications together, the Tenant had more than sufficient time to make this request in advance of the hearing.
6. I further considered the prejudice to the Landlord in adjourning the hearing as the arrears on the day of the hearing are substantial, and I considered the potential for the arrears to continue to grow on a delay for a new hearing date.
7. Given all the above and in order to provide the most fair and expeditious method of resolution to the application before the Board I am denying the Tenant her request to adjourn.

Tenant Claims Illegal Rent Increase

8. The Tenant claims the Landlord illegally increased the rent.
9. The Landlord submitted to the Board as evidence a copy of the N2 notice she served the Tenant with regards to the rent increase.
10. The N2 notice submitted was served to the Tenant more than 90 days from the increase.
11. The Tenant later testified she received a copy of the N2 notice.
12. With the evidence before me, and given the Tenant is not in dispute the Landlord served the Tenant with the N2 notice I find the Tenant's claim for illegal rent increase is dismissed.

Landlord's Application

13. 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.
14. As of the hearing date, the Tenant was still in possession of the rental unit.
15. The lawful rent is \$3,000.00. It is due on the 1st day of each month.
16. Based on the Monthly rent, the daily rent/compensation is \$98.63. This amount is calculated as follows: $\$3,000.00 \times 12$, divided by 365 days.
17. The Tenant has paid \$1,500.00 to the Landlord since the application was filed.
18. The rent arrears owing to September 30, 2023 are \$11,900.00.
19. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
20. The Landlord collected a rent deposit of \$3,000.00 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.
21. Interest on the rent deposit, in the amount of \$80.14 is owing to the Tenant for the period from September 1, 2022 to September 25, 2023.

Landlord's Evidence

22. The position of the Landlord is that the Tenant has paid little towards the arrears or kept up with lawful rent since the application was filed with the Board. The arrears are increasing substantially every month.
23. The Landlord testified the Tenant advised her in the summer she would move out in August 2023.
24. The Landlord testified the Tenant informed her by text, she was moving out on September 30, 2023.
25. The Tenant did not vacate the rental unit in August and as of the day of the hearing the Tenant is still in possession of the rental unit.

Tenant Evidence

26. The position of the Tenant is that she does not dispute she texted the Landlord and told her she was vacating the rental unit on September 30, 2023. The Tenant is not employed and has no source of income and therefore the Tenant is unable to offer a repayment plan for the Board's consideration.
27. The Tenant testified she was in a car accident two years ago and is on medication, however the Tenant did not submit any documentary evidence to support her testimony.
28. The Tenant lives alone in the rental unit and requested a delay of eviction to November 1, 2023.

Section 83: Relief From Eviction

29. 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, including submissions from the Tenant that she lives alone and has not source of income in order for the Board to consider a repayment plan and preserve the tenancy. I considered the impact to the Landlord on a long delay of eviction and the quantum of arrears on the day of the hearing and the fact the Tenant is unable to pay her lawful rent going forward and the potential for the arrears to increase substantially.
30. Given all the above I find it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act and I am granting the Landlord her request for eviction.
31. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
32. This order contains all reasons for the determinations and order made. No further reasons will be issued.

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:

- \$15,086.00 if the payment is made on or before October 31, 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 October 31, 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 October 31, 2023
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$8,471.61. 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 \$98.63 per day for the use of the unit starting September 26, 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 October 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 1, 2023 at 7.00% annually on the balance outstanding.
 8. If the unit is not vacated on or before October 31, 2023, then starting November 1, 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 1, 2023.

2023 ONLTB 69185 (CanLI)

October 20, 2023

Date Issued

Greg Brocanier

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 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 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	\$16,400.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,500.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$15,086.00

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

Rent Owing To Hearing Date	\$12,865.75
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,500.00
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	- \$3,000.00
Less the amount of the interest on the last month's rent deposit	- \$80.14
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$8,471.61
Plus daily compensation owing for each day of occupation starting September 26, 2023	\$98.63 (per day)