



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

**Citation:** Sharma v Ogbeide-ihama, 2023 ONLTB 66953

**Date:** 2023-10-11

**File Number:** LTB-L-037855-22

**In the matter of:** 74 UTOPIA WAY  
BRAMPTON ON L6P4A5

**Between:** Jeevan Asha Sharma Landlord

### **And**

Rita Ogbeide-Ihama Tenant

Jeevan Asha Sharma (the 'Landlord') applied for an order to terminate the tenancy and evict Rita Ogbeide-Ihama (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's Legal Representative, S. Waslat, and the Tenant's Agent and partner, Iyayi Asemota, attended the hearing.

### **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.

### Lawful Rent

3. Based on the evidence before me, I find that the lawful rent is \$2,277.00 as of August 1, 2022 and rent is due on the 1st day of each month. The Landlord's Legal Representative submitted that the rent increased by the guideline amount in August 2022. This was not disputed by the Tenant's Agent.
4. The Landlord's Legal Representative also submitted that the Landlord and Tenant agreed to increase the rent in April 2023 to \$2,500.00.

5. The rent increase the Landlord attempted to impose in April 2023 is illegal because it was not in accordance with the rent increase rules contained in the *Residential Tenancies Act, 2006* (the 'Act').
6. Subsection 119(1) of the Act states:

A landlord who is lawfully entitled to increase the rent charged to a tenant for a rental unit may do so only if at least 12 months have elapsed,

- (a) since the day of the last rent increase for that tenant in that rental unit, if there has been a previous increase; or
- (b) since the day the rental unit was first rented to that tenant, if clause (a) does not apply.

Emphasis Added

7. Subsection 120(1) of the Act states the following:

No landlord may increase the rent charged to a tenant, or to an assignee under section 95, during the term of their tenancy by more than the guideline, except in accordance with section 126 or 127 or an agreement under section 121 or 123.

8. Section 121 of the Act states the following:

- 1) A landlord and a tenant may agree to increase the rent charged to the tenant for a rental unit above the guideline if,
  - (a) the landlord has carried out or undertakes to carry out a specified capital expenditure in exchange for the rent increase; or
  - (b) the landlord has provided or undertakes to provide a new or additional service in exchange for the rent increase.
- 2) An agreement under subsection (1) shall be in the form approved by the Board and shall set out the new rent, the tenant's right under subsection (4) to cancel the agreement and the date the agreement is to take effect.
- 3) A landlord shall not increase rent charged under this section by more than the guideline plus 3 per cent of the previous lawful rent charged.

9. Subsection 123(1) of the Act states the following:

- 1) A landlord may increase the rent charged to a tenant for a rental unit as prescribed at any time if the landlord and the tenant agree that the landlord will add any of the following with respect to the tenant's occupancy of the rental unit:
  1. A parking space.
  2. A prescribed service, facility, privilege, accommodation or thing.

10. There was no evidence before me that the Landlord and Tenants' agreement to increase the rent was pursuant to section 121 of the Act. In any event, the rent increase was more than the guideline for 2023 plus 3%.

11. Subsection 3(1) of the Act states the following:

This Act, except Part V.1, applies with respect to rental units in residential complexes, despite any other Act and despite any agreement or waiver to the contrary.

12. Pursuant to section 3 of the Act parties cannot simply agree to a rent increase that is in excess of an increase permitted in the Act. This would be inconsistent with the purpose of the Act, which is to protect residential tenants from unlawful increases. Section 120 of the Act allows a Landlord to increase the rent by no more than the annual guideline amount, except in limited circumstances which are not relevant in this matter.

13. The Court of Appeal for Ontario in the *Honsberger v. Grant Lake Forest Resources Ltd.*, 2019 ONCA 44 confirmed the once a tenancy has started, all rent increases must be in accordance with the Act's rent increase rules, and those rules apply even if the parties to an existing tenancy enter into a new tenancy agreement.

#### Rent Arrears

14. Based on the Monthly rent, the daily rent/compensation is \$74.86. This amount is calculated as follows: \$2,277.00 x 12, divided by 365 days.

15. The Tenant has paid \$24,833.00 to the Landlord since the application was filed.

16. The Tenant's Agent did not dispute that the rent arrears owing to September 30, 2023 are \$13,545.00.

17. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

18. The Landlord collected a rent deposit of \$2,250.00 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.

19. Interest on the rent deposit, in the amount of \$101.28 is owing to the Tenant for the period from June 1, 2021 to September 25, 2023.

#### Relief From Eviction

20. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of 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 October 31, 2023 pursuant to subsection 83(1)(b) of the Act.

21. The Tenant's Agent stated that they have resided in the rental unit since 2016 and have had a good relationship with the Landlord, who knows their situation. The Tenant's Agent

stated that there has been a serious of events which has left them with financial issues, starting with the loss of both his parents, and then an injury which prevented him from working for six months. He works as a Data Analyst, his last job was with TD Bank and will be starting a new contract shortly. He stated that he is waiting for moneys to come from Nigeria and expects to have it by the end of January 2024. The Tenant's Agent requested a delay until the end of January 2024 to pay the rent arrears in full. In the

interim he proposed to pay the accruing rents on the last day of each month for October, November and December.

22. The Landlord's Legal Representative requested a standard order for eviction. She submitted that the Tenant has consistently not paid the rent and paid the rent late in this tenancy, there have been two prior orders from the Board and numerous N4 Notices served by the Landlord. She also submitted that the Tenant has not reached out prior to now despite requests to request a repayment arrangement. She also submitted that the Tenant's Agent has not provided any evidence of funds coming in January and cannot pay the rent on time in the interim. She further stated that this application was adjourned from February 2023 and that there has been ample time for the Tenant to repay or make payments towards these arrears.
23. The rent arrears currently outstanding are \$13,545.00, this is a significant increase since the application was filed seeking rent arrears \$6,500.00. The Tenant has not demonstrated that the accruing monthly rents were paid or can be paid. As well, the Tenant's repayment proposal will only be met if funds come from Nigeria in January 2024, which is unknown. Therefore, in these circumstances it is not fair to the Landlord to order a repayment plan or delay the eviction until January 2024. Given that the Landlord is holding a last month's rent deposit, it is only fair to delay the eviction to October 31, 2023.

**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:**
  - \$16,008.00 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 \$10,974.22. 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 \$74.86 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 22, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 23, 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 ONL TB 66953 (CanLII)

**October 11, 2023**

**Date Issued**

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Lisa Del Vecchio

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	\$40,655.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$24,833.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$16,008.00</b>

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

Rent Owing To Hearing Date	\$37,972.50
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$24,833.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$2,250.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$101.28
<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$10,974.22</b>
Plus daily compensation owing for each day of occupation starting September 26, 2023	\$74.86 (per day)