



Order under Section 69 Residential Tenancies Act, 2006

Citation: Ghodsian-zadeh v Martins, 2023 ONLTB 63267

Date: 2023-09-25

File Number:
LTB-L-008801-23

In the matter of: 7 ANNWOOD COPSE
ORO-MEDONTE ON L0L2L0

Between: Farshid Ghodsian -zadeh Landlord

And

Joseph Martins and Michelle Sandor Tenants

Farshid Ghodsian-zadeh (the 'Landlord') applied for an order to terminate the tenancy and evict Joseph Martins ('JM') and Michelle Sandor ('MS') (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on August 29, 2023.

Only the Landlord and the Tenant MS attended the hearing. The Tenant MS indicated that she was attending on only her own behalf and not on behalf of the other Tenant JM.

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 rent is \$3,400.00. It is due on the 1st day of each month.
4. A question arose during the hearing as to whether the \$3,400.00 was in fact lawful rent in light of the fact that it was raised by an amount above guideline to take effect January 1,

2022 and no proper notice of rent increase was served. The Tenant MS did not contest the fact that the Landlord claimed \$3,400.00 in rent and that the Tenants were in arrears of payment further to this rent rate. The Landlord testified that the Tenants had paid this amount from January 2022 forward into the beginning of 2023, falling into arrears beginning March 2023. The Tenant MS testified that the Tenant JM agreed to the increase without informing her. JM looked after the rent payments on behalf of the Tenants and she was unaware of the amount being paid until she received notice of the arrears from the Landlord.

5. I find that the Landlord failed to provide the Tenants with any valid notice of rent increase. The rental increase would have been void under subsection 116(4) of the *Residential Tenancies Act, 2006* (the 'Act') but for the operation of subsection 135.1. That latter subsection provides that an increase in rent that would otherwise be void under subsection 116(4) is deemed not to be void if the tenant has paid the increased rent in respect of each rental period for at least 12 consecutive months and if the tenant has not, within that 12 month period, made an application to the Board in which the validity of the rent increase was in issue.
6. I find that, in the circumstances, subsection 135.1 (1) operates to save the rent increase and the \$3,400.00 was lawful rent as at the time the Landlord filed this application.
7. Based on the Monthly rent, the daily rent/compensation is \$111.78. This amount is calculated as follows: \$3,400.00 x 12, divided by 365 days.
8. The Tenant has paid \$10,900.00 to the Landlord since the application was filed.
9. The rent arrears owing to August 31, 2023 are \$19,700.00.
10. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. There is no last month's rent deposit.
12. At the outset of the hearing the Tenant MS and Landlord indicated that the parties had consented to a non-voidable termination of the tenancy as of September 30, 2023. In that the Tenant MS acknowledged that she was not authorized to speak on behalf of both Tenants, I could not accept the parties' consent request.
13. That said, the Tenant MS was clear that the Tenants could not afford to pay the \$3,400.00 per month rent and intended to vacate the unit as soon as possible. It was on this basis that she had agreed to a non-voidable termination of the tenancy. I find, accordingly, that a termination order allowing eleven days to termination from the date of the order is appropriate.
14. 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:**
 - \$23,286.00 if the payment is made on or before September 30, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$26,686.00 if the payment is made on or before October 6, 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 October 6, 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 October 6, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$19,727.62. 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 Tenants shall also pay the Landlord compensation of \$111.78 per day for the use of the unit starting August 30, 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 October 6, 2023, the Tenants will start to owe interest. This will be simple interest calculated from October 7, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before October 6, 2023, then starting October 7, 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 October 7, 2023.

September 25, 2023

Date Issued

Lynn Mitchell

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 April 7, 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 September 30, 2023

Rent Owing To September 30, 2023	\$34,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$10,900.00
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	\$23,286.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before October 6, 2023

Rent Owing To October 31, 2023	\$37,400.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$10,900.00
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	\$26,686.00

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

Rent Owing To Hearing Date	\$30,441.62
Application Filing Fee	\$186.00
NSF Charges	\$0.00

2023 ONLTB 63267 (CanLII)

Less the amount the Tenant paid to the Landlord since the application was filed	- \$10,900.00
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	- \$
Less the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord	\$19,727.62
Plus daily compensation owing for each day of occupation starting August 30, 2023	\$111.78 (per day)