



Order under Section 69
Residential Tenancies Act, 2006

Citation: Fernandes v Nyari, 2023 ONLTB 60806

Date: 2023-09-06

File Number: LTB-L-048015-22

2023 ONLTB 60806 (CanLII)

In the matter of: 1, 767 MARLEE AVE
NORTH YORK ON M6B3J8

Between: Jose Fernandes Landlord

And

Ildiko Nyari Tenant

Jose Fernandes (the 'Landlord') applied for an order to terminate the tenancy and evict Ildiko Nyari (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's Representative David Ciobotaru and the Tenant 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.
3. The lawful rent is \$1,700.00. It is due on the first day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$55.89. This amount is calculated as follows: \$1,700.00 x 12, divided by 365 days.
5. The Tenant has paid \$6,900.00 to the Landlord since the application was filed.

6. The rent arrears owing to August 31, 2023 are \$22,200.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.

Dispute Over Amount of Arrears Owing

9. The Landlord provided a ledger of payments owing from September 2022 to August 2023.
10. According to that ledger, no rent has been paid from September 2022 to August 2023, in the amount of \$20,900.
11. According to the L1 application filed, rent in the amount of \$8,200 was owing for the period from April 2022 – August 2022.
12. The Landlord claims that \$6,900 has been paid by the Tenant since the application was filed. That leaves a balance of \$22,200 in arrears: **\$8,200** (per the L1) + **\$20,900** (new rent) – **\$6,900** (amounts paid by Tenant) = **\$22,200** (total arrears).
13. It appears the Landlord has made a clerical mistake in the L1/L9 update. Instead of adding the arrears of \$8,200 claimed in the L1 application, the Landlord's agent wrongly added \$6,400, the amount claimed in the N4, instead of the \$8,200 claimed in the L1 application.
14. As a result, the Landlord has erred in claiming \$1,800 less in arrears than was actually owing: the amount of arrears should be \$22,200.00, as per the ledger and the L1, not \$20,400, as per the Landlord's Representative's calculation.
15. The Tenant argued that she had 8 receipts for rent payments made in 2022, but these were not provided to the LTB in a timely manner and were not before me.
16. She admitted that the payments for May – August 2023, were outstanding.
17. The Tenant offered no comprehensible testimony that she had paid off the arrears claimed by the Landlord.
18. I prefer the evidence of the Landlord as to the arrears owing in the form of a detailed ledger. Although I find an error in the calculations of the Representative of the Landlord, there is no error in the actual amounts claimed for the various months on the ledger itself.
19. As a result, I prefer the Landlord's evidence and accept it.
20. I find that the Tenant owes the Landlord \$22,200 in arrears to the end of August 2023.

Sections 82 and 83 of the Act

21. The Tenant provided some evidence regarding issues with parking and laundry. However, they did not comply with rule 19.4 of the Board's *Rules of Procedure*, and did not satisfy the Board that she could not have done so within the meaning of rule 19.5. As a result, the

Tenant's complaints about parking and laundry services are not properly before me as section 82 issues and thus I will not address them as such.

22. 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 not be unfair to postpone the eviction until September 30, 2023 pursuant to subsection 83(1)(b) of the Act.
23. The Landlord did attempt a payment plan but the Tenant did not keep up with her payments.
24. The Landlord relies on the rental income to support him.
25. The Landlord cannot afford to have a tenant that does not pay.
26. The Tenant has 3 kids. She is a single mom. She said it is hard to find a new place.
27. She offered a payment plan of \$300/month, which the Landlord rejected.
28. The arrears are substantial here: \$22,200 to the end of August 2023.
29. Other than difficulty in finding a new place, the Tenant did not offer any other evidence of financial hardship.
30. I am prepared to offer the Tenant time to the end of September 2023, to find a new unit, if she cannot pay off the arrears by then, by way of relief.

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:**
 - \$24,086.00 if the payment is made on or before September 30, 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 September 30, 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 September 30, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$22,362.70. 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 \$55.89 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 September 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 1, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before September 30, 2023, then starting October 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 October 1, 2023.

September 6, 2023

Date Issued

James Campbell

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 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 September 30, 2023

Rent Owing To September 30, 2023	\$30,800.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,900.00
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	\$24,086.00

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

Rent Owing To Hearing Date	\$29,076.70
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,900.00
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	\$22,362.70
Plus daily compensation owing for each day of occupation starting August 31, 2023	\$55.89 (per day)