



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

Citation: Addario v D'acri, 2023 ONLTB 55898

Date: 2023-08-21

File Number: LTB-L-025211-23

In the matter of: 5 BUCKLAND RD
NORTH YORK ON M3L1V9

Between: Dora Addario Landlord

And

Nadia D'acri Tenant

Dora Addario (the 'Landlord') applied for an order to terminate the tenancy and evict Nadia D'acri (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on July 31, 2023.

The Landlord and the Tenant attended the hearing. The Landlord's Legal Representative A. Choubeta, Landlord's Support (her daughter) Rosanna Addario and Tenant's Legal Representative H. Sone was also present.

Determinations:

Preliminary issues – Disclosure

1. The Landlord's Legal Representative brought up the issue that the Tenant was planning on relying on a property standards order issued by the City of Toronto which was not uploaded until July 28, 2023.
2. The Tenant's Legal Representative stated that the Tenant received the above-mentioned document late from the city, hence, the delay.
3. I understand that the document was made available later than the prerequisite six days notice period required by the Board, but it did not prevent the Tenant to raise a list of issues she wanted to raise at the hearing. She was well aware of the complaints she made to the city and the issues she raised with them.

4. Since the Tenant had not filed any maintenance issues in the documentation which was submitted to the Landlord and the Board prior to July 28, 2023. Therefore, I did not admit the document under s.82 of *the Residential Tenancies Act, 2006* (the "Act"). I did allow the Tenant to raise any maintenance issue which may be considered under s.83 of the Act.

Preliminary issues – What is the lawful rent?

5. The Tenant moved into the rental unit in August 2016. The rent was \$900.00 per month which included all utilities. In August 2017 the Landlord started charging the Tenant extra for utilities The Tenant continued to pay the \$900.00 plus utilities until September 2018 when the Landlord gave her a verbal notice and increased the rent to \$1,000.00.
6. The Tenant testified that in April 2019 the Landlord verbally asked the Tenant to start paying \$1,500.00 rent starting June 1, 2019. The Tenant paid \$1,500.00 each month from June 1, 2019 until August 1, 2020. After August 2020, the Tenant started making partial payments towards her rent citing COVID-19 loss of job as the reason. On August 29, 2021, the Tenant wrote a letter to the Landlord stating that her rent increase was unlawful and started paying her initial rent of \$900.00 to the Landlord.
7. The Landlord testified that she did not increase the rent for the Tenant. The Tenant gave her notice to move out in 2019 as she had bought her own place. The Landlord found someone else to move into the rental unit at a higher rent. The Tenant then came and asked the Landlord to let her continue residing at the rental unit at the new rent they had with the potential tenant. The Landlord added that they never gave any notice for rent increase in 2019 because the Tenant was leaving and then she re-negotiated a new lease with the Landlord.
8. Subsection 135.1 of the Act provides as follows:

135.1 (1) 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.

Non-application

(2) Subsection (1) does not apply with respect to an increase in rent if the tenant has, within one year after the date the increase was first charged, made an application in which the validity of the rent increase is in issue.

Deemed compliance with s. 116

(3) For greater certainty, if subsection (1) applies with respect to an increase in rent, section 116 is deemed to have been complied with

9. It was not disputed that in 2019 the Landlord raised the rent from \$900.00 to \$1500.00 which is an increase well in excess of the 2019 guideline of 1.5. Further, the Landlord did

not give the Tenant notice of this rent increase as required by section 116 of the Act. However, the Tenants paid the increased rent from June 1, 2019 to August 1, 2020, that is for more than 12 consecutive months. The Tenants did not bring an application within one year after the increase was first charged. As such, pursuant to section 135.1 the rent increase is deemed not to be void.

10. Hence the lawful monthly rent at the unit is \$1,500.00 as there have been no further rent increases since 2019.

L1 Application

11. 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.
12. As of the hearing date, the Tenant was still in possession of the rental unit.
13. The lawful rent is \$1,500.00. It is due on the 1st day of each month.
14. Based on the Monthly rent, the daily rent/compensation is \$49.32. This amount is calculated as follows: \$1,500.00 x 12, divided by 365 days.
15. The Tenant has paid \$7,200.00 to the Landlord since the application was filed.
16. The rent arrears owing to July 31, 2023 are \$7,500.00.
17. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
18. There is no last month's rent deposit.

Section 83 considerations

19. 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.
20. The tenant testified that she is a student and is currently on OSAP. The Tenant is willing to make an additional payment of \$50.00 to pay off the rent arrears till she finishes her course in April 2024 and then once she gets a fulltime job, she may be able to pay more. She also testified that she has been living at the rental unit since 2016 and has made a community around the rental unit. She also talked about medical challenges which she has but no evidence or medical reports were submitted.
21. The Tenant also said that the Property Standards Order which was issued by the City shows that there are maintenance issues which she has been dealing with for the last three years so she should be granted 30% abatement of rent.

22. The Landlord on the other hand is a 74-years old retiree who cannot take the burden of the Tenant not paying her rent in time and has to bear all the expenses. The Property Standards Order only contains minor maintenance issues which the Landlord will be fixing. The Landlord has been very patient with the Tenant not paying full rent since 2020 and it will be highly prejudicial for the Landlord to grant more time.
23. Based on the totality of evidence, I find that the Tenant has been paying some rent based on her understanding of what the lawful rent should be and has lived at the rental unit since 2016. Based on the length of the tenancy and the personal circumstances of the Tenant, I am willing to grant the Tenant some additional time to either pay off the rent arrears or find another suitable accommodation. While the brief delay may cause some prejudice to the Landlord, it is less than the Tenant would experience if extra time was not granted. The Tenant may choose to bring her own application for the maintenance issues if she chooses to do so.

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:**
 - \$9,186.00 if the payment is made on or before August 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$10,686.00 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 \$7,686.00. 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 \$49.32 per day for the use of the unit starting August 1, 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.

August 21, 2023

Date Issued

Sheena Brar

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 August 31, 2023

Rent Owing To August 31, 2023	\$16,200.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$7,200.00
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	\$9,186.00

B. 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	\$17,700.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$7,200.00
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	\$10,686.00

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

Rent Owing To Hearing Date	\$14,700.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$7,200.00
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	\$7,686.00
Plus daily compensation owing for each day of occupation starting August 1, 2023	\$49.32 (per day)