



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

Citation: To v Tucker, 2023 ONLTB 56619

Date: 2023-08-18

File Number: LTB-L-043749-22

In the matter of: P.O. BOX 613, 871 Front Street LeFroy
ON L0L1K0

Between: Nhat Xenh Sam To Landlord

And

Jake Tucker, Clayton Whitney and Amy Holden Tenant

Nhat Xenh Sam To (the 'Landlord') applied for an order to terminate the tenancy and evict Jake Tucker, Clayton Whitney and Amy Holden (collectively the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

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

The Landlord and the Tenant attended the hearing, with Jake Tucker acting for all the tenants.

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. However, The LTB has already issued an order for termination of the tenancy on 31 August 2023, as the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year. The application number was LTB-L-039473-22.
3. The lawful rent is \$1,800.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$59.18. This amount is calculated as follows: \$1,800.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.

6. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
7. The rent arrears owing to July 31, 2023, with costs are \$37,986, which exceeds the monetary jurisdiction of the Board. Section 207(1) of the *Residential Tenancies Act, 2006* ("Act") limits the monetary jurisdiction of the Board to that of the Small Claims Court. At this time that amount is \$35,000.00.
8. Section 207(3) of the Act provides that if a landlord proceeds with a claim at the Board that exceeds the Board's monetary jurisdiction, all rights of the party in excess of the Board's monetary jurisdiction are extinguished once the Board issues its order.
9. In the recent decision *Galaxy Real Estate Core Ontario LP v. Kirpichova et al.*, 2023 ONSC 4356, the Divisional Court agreed with the LTB that the monetary jurisdiction does not apply to the amount the Tenant must pay if they want to void the order and continue the tenancy pursuant to section 74(4) of the Act.
10. The Tenant agreed that rent had not been paid since November 2021. The Tenant stated that they withheld rent due to repairs not being done. The Tenant alleges that they only had access to half of the home due to the disrepairs. Also, the Tenant claimed that he had spent thousands of dollars to repair the unit but did not produce any receipts for these expenses.
11. The Tenant did not file any evidence in order to raise issues under section 82 of the *Residential Tenancies Act, 2006* ("Act"), and therefore I cannot consider a remedy for these issues. However, I understand that there are T2 and T6 applications pending, where the Tenants can advance these issues.
12. The Landlord collected a rent deposit of \$1,800.00 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.
13. Interest on the deposit is owing for the period from April 17, 2023 to July 25, 2023 in the amount of \$8.61.
14. 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 whether the Landlord attempted to negotiate a repayment agreement with the Tenant, and find that it would be unfair to grant relief pursuant to subsection 83(1)(a) and 204(1) of the Act by way of a payment plan.
15. The Tenants assert there are outstanding maintenance issues and spent thousands of dollars to repair the unit but did provide any details or supporting evidence. While the Tenant alleges that they only had access to half of the home, it was unclear why the Tenants did not pay any rent at all, for the part of the house they did use. The Tenant said he had medical bills for his family, but these were not filed either.

16. In my view, there was no evidence before me that the Landlord was in serious breach of his responsibilities pursuant to s. 83(3)(a) of the Act.
17. Any delay would be very prejudicial for the Landlord as no rent has been paid for 21 months and the arrears exceed the Board's monetary jurisdiction.
18. The Landlord has a mortgage and financial responsibilities to shoulder.
19. The Landlord did try to negotiate a payment plan, but to no avail. The Tenant simply said he would not pay.
20. For these reasons, and due to the extreme prejudice to the Landlord, I will not order relief by way of a payment plan.
21. If the Tenants do void this order by making the payment in paragraph 2 below, the tenancy is still terminated by order LTB-L-039473-22, and the Landlord may enforce that order.

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:**
 - **\$39,786.00** if the payment is made on or before August 29, 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 July 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 August 29, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord **\$35,856.89**. 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 \$59.18 per day for the use of the unit starting July 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 August 29, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 30, 2023 at 6.00% annually on the balance outstanding.

- 8. If the unit is not vacated on or before August 29, 2023, then starting August 30, 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 August 30, 2023.
- 10. If the Tenants do void this order by making the payment in paragraph 2 above, the tenancy is still terminated by order LTB-L-039473-22, and the Landlord may enforce that order.

August 18, 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 February 28, 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.

A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before August 30, 2023

Rent Owing To August 31, 2023	\$39,600.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	00.00
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	\$39,786.00

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

Rent Owing To Hearing Date	\$37,479.50
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	-\$0.00
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	- \$1,800.00
Less the amount of the interest on the last month's rent deposit	- \$8.61
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	\$35,856.89
Plus daily compensation owing for each day of occupation starting July 12, 2023	\$59.18 (per day)

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