



Order under Section 69 Residential Tenancies Act, 2006

Citation: Lee v Zhan, 2023 ONLTB 53683

Date: 2023-08-03

File Number: LTB-L-013238-23

In the matter of: 5 MARBLEMOUNT CRES
SCARBOROUGH ON M1T2H5

Between: Arthur Lee Landlord

And

Shenyang Zhan and Wing San Cheung Tenant

Arthur Lee (the 'Landlord') applied for an order to terminate the tenancy and evict Shenyang Zhan and Wing San Cheung (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on July 17, 2023.

The Landlord, the Landlord's support Jennifer Lee and Andrea Lee, the Landlord's agent Ryan West, the Landlord's Legal Representative Richard Hissey, the Tenant and Eillen Chang the interpreter 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 \$3,000.00. It is due on the 15th day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$98.63. This amount is calculated as follows: \$3,000.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to August 14, 2023 are \$24,000.00.

7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$3,000.00 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.
9. Interest on the rent deposit, in the amount of \$112.81 is owing to the Tenant for the period from January 15, 2022 to July 17, 2023.
10. Based on the vast arrears of rent, the Landlord is seeking a standard 11day order for arrears of rent and eviction. The Landlord submits that that it would be unfair to delay the eviction as the Tenant even while working was not able to pay to the lawful monthly rent, that the Tenant has not paid rent for 8 months and that any further delay would be prejudicial as further arrears will arise.
11. The Tenant submits that he resides in the unit himself, that he lost his job in January 2023 and that he has been looking for new employment since. When fully employed he earns an approximate income of \$4,000.00 per month and when asked about how much time he may require to vacate the rental unit he submitted that he could move out by mid September 2023.
12. 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 from eviction pursuant to subsection 83(1) of the Act.
13. In arriving at my determination, I take into consideration that this is a relatively recent tenancy that began on January 15, 2022, that the arrears of rent are equivalent to eight (8) months of unpaid rent and that as of the time of the hearing there is no prognosis for a change in the Tenants financial circumstances. The Tenant has not demonstrated an ability to pay the lawful rent, even when fully employed and has not demonstrated good faith to make any payments towards rent during past 8 months. Any further delay would be prejudicial to the Landlord, I am mindful that the Court Enforcement Office (Sheriff) does not enforce the order immediately and I have taken that delay into consideration.
14. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

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:**
 - \$24,186.00 if the payment is made on or before August 14, 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 August 14, 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 14, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$16,692.37. 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 \$98.63 per day for the use of the unit starting July 18, 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 14, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 15, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before August 14, 2023, then starting August 15, 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 15, 2023.

August 3, 2023

Date Issued

Alicia Johnson
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 15, 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 14, 2023

Rent Owing To August 14, 2023	\$24,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	\$24,186.00

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

Rent Owing To Hearing Date	\$19,619.18
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	- \$3,000.00
Less the amount of the interest on the last month's rent deposit	- \$112.81
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	\$16,692.37
Plus daily compensation owing for each day of occupation starting July 18, 2023	\$98.63 (per day)