



Order under Section 69 Residential Tenancies Act, 2006

Citation: AMSTAR POOL I LP v Budhram, 2023 ONLTB 51723

Date: 2023-07-31

File Number: LTB-L-072401-22

In the matter of: 2104, 2737 KIPLING AVE
ETOBICOKE ON M9V4C3

Between: AMSTAR POOL I LP Landlord

And

Sanya Budhram Tenant

AMSTAR POOL I LP (the 'Landlord') applied for an order to terminate the tenancy and evict Baichan Budhram because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 20, 2023.

The Landlord's Representative, Pylicia Thomas, attended the hearing. Sanya Budhram, the daughter of Baichan Budhram named on the application as a Tenant also attended the hearing.

As of 11:55 a.m., Baichan Budhram was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence. For the reasons set out in this order, the application is amended to remove Baichan Budhram as a Tenant and name Sanya Budhram.

Determinations:

1. Preliminary Matters:

A. Validity of N4 Notice: Ms. Sanya Budhram

2. For the reasons outlined below, I find that the Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice) is invalid.

3. Ms. Budhram stated that she lives at the rental property. She has lived there for approximately 10 years. The Tenant is her father. Her father never lived at the rental property and has never paid rent to the Landlord. Ms. Budhram stated that her father signed the lease on her behalf because of her income at the start of her tenancy. In other words, she was directly responsible for rent payments.
4. Ms. Budhram stated that throughout her tenancy, she communicated with the Landlord or property management on all matters relating to her tenancy at the rental unit, including to discuss rent arrears and a repayment plan.

5. Section 2(1) of the *Residential Tenancies Act, 2006* (the 'Act') states:

““tenant” includes **a person who pays rent in return for the right to occupy a rental unit** and includes the tenant’s heirs, assigns and person representatives...”

[emphasis added]

6. Although Ms. Budhram was not named on the original lease agreement, Ms. Budhram has occupied the rental unit for approximately ten years and has been paying rent to the Landlord throughout this period of time.
7. Additionally, the Landlord or property management communicated with Ms. Budhram, and not her father, when discussing rent arrears and a payment plan.
8. I find that Ms. Budhram is a tenant of the rental unit and, as such, should have been named in the N4 Notice and further should have been served with the N4 Notice within the prescribed time period. Given the notice of termination is invalid, no termination can result and the application proceeded as a rent arrears application only.

Rent Arrears Owing

9. The Landlord’s Representative stated that the Landlord would be proceeding with an application for arrears only if I determined that the N4 Notice is invalid.
10. As of the hearing date, the Tenant was still in possession of the rental unit.
11. The lawful rent is \$1,384.76. It is due on the 1st day of each month.
12. Based on the Monthly rent, the daily rent/compensation is \$45.52. This amount is calculated as follows: \$1,384.76 x 12, divided by 365 days.
13. The Tenant has paid \$4,000.00 since the application was filed.
14. The rent arrears owing to July 31, 2023 are \$9,615.21.

15. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
16. The Landlord collected a rent deposit of \$23.08 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.

It is ordered that:

1. The Tenant shall pay to the Landlord \$9,801.21. This amount includes rent arrears owing up to the date of this order plus the cost of the application.
2. If the Tenant does not pay the Landlord the full amount owing on or before August 11, 2023, the Tenant will start owing interest. This will be simple interest calculated from August 12, 2023 at 6% annually on the balance outstanding.

July 31, 2023

Date Issued

Julia Toso

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.

**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 July 31, 2023

Rent Owing To July 31, 2023	\$9,615.21
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	\$9,801.21

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