



Order under Section 69 Residential Tenancies Act, 2006

Citation: Song v Nojaba, 2023 ONLTB 52399

Date: 2023-07-27

File Number: LTB-L-021498-23

In the matter of: BASEMENT UNIT, 25 FREDERICK
PEARSON ST
EAST GWILLIMBURY ON L9N0R8

Between: Sijia Song Landlord

And

Mahdis Nojaba Tenant

Sijia Song (the 'Landlord') applied for an order to terminate the tenancy and evict Mahdis Nojaba (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, represented by Yun Tao Li, and the Tenant, who met with Duty Counsel, 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 \$1,500.00. It is due on the 1st day of each month.
4. 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.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to July 31, 2023 are \$9,000.00.
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 \$1,500.00 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 \$39.25 is owing to the Tenant for the period from July 1, 2022 to July 17, 2023.

10. The Tenant testified that she stopped paying rent in February due to the lack of heat in the basement unit. The Tenant provided no disclosure prior to the hearing and submitted no evidence to support this claim. In order to preserve the Tenant's rights to a fair hearing, the issue of whether there was a lack of heat was heard under section 83 of the Residential Tenancies Act to consider whether the Landlord is in serious breach of obligations under the Act. The issue of heat was not heard under section 82 due to the lack of disclosure and evidence.
11. The Tenant testified that there was no heat from November 2022.
12. The Landlord testified that he received a text message from the Tenant and hired an HVAC professional to look into the issue. The professional found no problem with the heat but a google home thermostat was installed to monitor the heat. The Landlord testified that the heat averaged 22.5 degrees.
13. At one point the Tenant sent a message to the Landlord claiming the unit was at -30 degrees. The Landlord contacted the police due to concerns about the Tenant safety and the unit was entered with the police. The temperature was found to be 23 degrees when they arrived.
14. Considering the fact that this a basement unit in a home, I find that it is unreasonable to accept that the temperature would be -30 degrees. If this was the case, the pipes would have frozen and the upstairs would have certainly been extremely cold.
15. I find there is insufficient evidence to support the Tenant's claim that the Landlord is in serious breach of his obligations under the Act. Considering the fact the Tenant has not paid rent since January 2023, there will be no relief from eviction granted.
16. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

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 July 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$10,686.00 if the payment is made on or before August 7, 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 7, 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 7, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$6,985.19. 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 \$49.32 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 7, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 8, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before August 7, 2023, then starting August 8, 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 8, 2023.

July 27, 2023

Date Issued

Greg Joy

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 8, 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 July 31, 2023

Rent Owing To July 31, 2023	\$9,000.00
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	\$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 August 7, 2023

Rent Owing To August 31, 2023	\$10,500.00
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	\$10,686.00

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

Rent Owing To Hearing Date	\$8,338.44
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	- \$1,500.00
Less the amount of the interest on the last month's rent deposit	- \$39.25
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	\$6,985.19
Plus daily compensation owing for each day of occupation starting July 18, 2023	\$49.32 (per day)