



Order under Section 69 Residential Tenancies Act, 2006

Citation: seema v D'ariano, 2023 ONLTB 48656

Date: 2023-07-04

File Number: LTB-L-010454-23

In the matter of: 363 MUD ST E
Stoney Creek ON L8J3B5

Between: Seema Kurd and Riaz Kurd Landlord

And

Philicia D'ariano Tenant

Seema Kurd & Riaz Kurd (the 'Landlord') applied for an order to terminate the tenancy and evict Philicia D'ariano (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 21, 2023.

The Landlord's Agent, Shamshad Kurd and the Tenant attended the hearing.

Preliminary Issue: Has the Landlord named the correct party?

1. Yes. The Tenant does not dispute that Danko Pojuzina (DP), her common law/spouse vacated the rental unit in December 2022. Based on the written tenancy agreement between the Landlord and DP, Philicia D'Ariana was not named as Tenant. Philicia D'Ariana during this tenure was an occupant of the rental unit. That tenancy terminated by oral agreement
2. The Landlord testified a new oral agreement, negotiated by Danko Pojuzina and Philicia D'Ariana was reached requiring Philicia D'Ariana to pay \$1,000.00 per month for the unit starting January 1, 2023 which for the most part corroborated by the Tenant's testimony.
3. Contrary to my oral ruling, the unit was not assigned by DP to the Philicia D'Ariana with the Landlord's consent. The tenancy agreement had a fundamental change from the tenancy with DP because the rental unit was different because the garages were not included as part of the rental unit and the new rent was \$1,000.00 per month instead of \$3,500.00 per month. As such, I find a new tenancy was created between the Landlord and Philicia D'Ariana, hereof referred to as Tenant.

4. Although the Tenant may have been negotiating an abatement because of maintenance issues, doesn't change the monthly rent charge. The Tenant has not provided advance notice to the Landlord of issues she wanted to raise at this hearing as required by section 82 of the Act. Therefore, the Tenant may file her own application if she has enough evidence to support her claim and remedy.

Determinations:

5. 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.
6. As a result of the findings made in paragraphs 1 and 2, hereof I find the N4 Notice is a valid notice because the Landlord has named the correct party and the correct rent charge. I am also satisfied the Tenant was given N4 Notice, contrary to the Tenant's testimony because the Certificate of Service verifies the N4 Notice was given on January 17 2023 which was the same day the Tenant stated she spoke to the Landlord last on the property. The Landlord also testified that they had considerable discussion about the rent on January 17, 2023 when the N4 was given to the Tenant.
7. As of the hearing date, the Tenant was still in possession of the rental unit.
8. The lawful rent is \$1,000.00. It is due on the 1st day of each month.
9. Based on the Monthly rent, the daily rent/compensation is \$32.88. This amount is calculated as follows: \$1,000.00 x 12, divided by 365 days.
10. The Tenant has not made any payments since the application was filed.
11. The rent arrears owing to June 30, 2023 are \$6,000.00.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
13. There is no last month's rent deposit collected.
14. 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.
15. The Tenant stated she couldn't afford to pay the arrears and wasn't able to propose a payment plant because she has no money. Given the Tenant has made no payments in six months, I find it would be unfair to the Landlord, if eviction is postponed.

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:**
 - \$7,186.00 if the payment is made on or before July 15, 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 15, 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 July 15, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$5,876.48. 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 \$32.88 per day for the use of the unit starting June 22, 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 July 15, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 16, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before July 15, 2023, then starting July 16, 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 July 16, 2023.

July 4, 2023

Date Issued

Sandra Macchione

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 January 16, 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 15, 2023

Rent Owing To July 31, 2023	\$7,000.00
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	\$7,186.00

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

Rent Owing To Hearing Date	\$5,690.48
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	- \$0.00
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	\$5,876.48
Plus daily compensation owing for each day of occupation starting June 22, 2023	\$32.88 (per day)