



Order under Section 69 Residential Tenancies Act, 2006

Citation: Hasan v Marcelo, 2023 ONLTB 45104

Date: 2023-06-19

File Number: LTB-L-021629-22

In the matter of: UPPER UNIT, 11 ETIENNE ST
SCARBOROUGH ON M1L0A2

Between: Akm Hasan Landlord

And

Jeremiah Marcelo, Marilou Marcelo, Mark Tenant
Marcelo and Silvestre L. Marcelo

Akm Hasan (the 'Landlord') applied for an order to terminate the tenancy and evict Jeremiah Marcelo, Marilou Marcelo, Mark Marcelo and Silvestre L. Marcelo (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

Akm Hasan (the 'Landlord') applied for an order to terminate the tenancy and evict Jeremiah Marcelo, Marilou Marcelo, Mark Marcelo and Silvestre L. Marcelo (the 'Tenant') because the Tenant has been persistently late in paying the Tenant's rent.

This application was heard by videoconference on March 6, 2023.

Only the Landlord and his representative Bitu Di Lisi attended the hearing.

As of 12:02PM, the Tenant 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.

Determinations:

L1 Application – Rent Arrears

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 \$2,040.73. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$67.09. This amount is calculated as follows: \$2,040.73 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 March 31, 2023, are \$35,936.79.
7. The Landlord was informed that pursuant to subsection 207(1) of the Residential Tenancies Act, 2006 (the 'Act') the monetary jurisdiction of the Board is \$35,000.00.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$1,950.00 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.
10. Interest on the rent deposit, in the amount of \$189.79 is owing to the Tenant for the period from February 1, 2017 to March 6, 2023.

L2 Application - N8 Notice of Termination

11. The Landlord applied for an order to terminate the tenancy and evict the Tenants because the Tenant persistently failed to pay rent when it was due. The Landlord served on the Tenants an N8 notice on March 23, 2022 to terminate on May 31, 2022.
12. As per the N8 Notice, the Tenants had not paid rent on time by the first day of the month starting from July 01, 2021, to March 01, 2022.
13. The Landlord testified that he had had multiple discussions with the Tenant about paying rent late. As evidence, the Landlord submitted a payment ledger to the Board, which establishes that the Tenant consistently paid rent late from February 01, 2022, to March 01, 2023.

No Relief from Eviction

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 from eviction pursuant to subsection 83(1) of the Act.
15. Pursuant to section 83(6), I am required to consider whether the Landlord made attempts to negotiate a payment agreement. The Landlord's representative testified that several letters were sent to the Tenant to discuss a payment agreement. The Tenant made

promises to pay as a result, but the Tenant defaulted on the payments. I am satisfied that the Landlord attempted to negotiate a payment agreement with the Tenant.

16. With respect to section 83(2), the Tenant was not present to disclose any circumstances for me to consider delaying or denying eviction. Further, the Landlord was not aware of any of the Tenant's circumstances for me to consider delaying or denying eviction. While the Tenant made some payments after the application was filed, the arrears are still substantial. As such, I find termination to be appropriate.

It is ordered that:

Regarding L1 Application

1. Unless the Tenant voids the order as set out below, the tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before June 30, 2023.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$35,186.00 if the payment is made on or before . 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 June 30, 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 June 30, 2023**
5. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the arrears of rent, compensation and the cost of filing the application the Landlord is entitled to by **\$32,143.54**. See Schedule 1 for the calculation of the amount owing. However, the Landlord is authorized to deduct from the amount owing to the Tenant \$67.09 per day for compensation for the use of the unit starting March 7, 2023 until the date the Tenant moves out of the unit.
6. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
7. If the unit is not vacated on or before June 30, 2023, then starting July 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

8. 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 1, 2023.

Regarding the L2 Application:

9. If the Tenant voids the L1 portion of the order in accordance with paragraph two above, the tenancy shall continue on the following terms.
10. The Tenant shall pay the Landlord the monthly rent due on or before the first day of the month for the period July 01, 2023 to July 01, 2024.
11. If the Tenant fails to make any of the payments in paragraph 13 above, the Landlord may apply under section 78 of the Act, within 30 days of the breach and without notice to the Tenant, for an order terminating the tenancy and evicting the Tenant.

June 19, 2023

Date Issued

Percy Laryea

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 1, 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.

*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

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 June 30, 2023

Rent Owing To June 30, 2023	\$ 37,977.52
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	\$38,163.52
Total the Tenant must pay to continue the tenancy	\$35,186.00

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

Rent Owing To Hearing Date	\$34,097.33
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	- \$1,950.00
Less the amount of the interest on the last month's rent deposit	- \$189.79
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	\$32,143.54
Plus daily compensation owing for each day of occupation starting March 7, 2023	\$67.09 (per day)