



Order under Section 69 Residential Tenancies Act, 2006

Citation: Khan v Bakhsh, 2023 ONLTB 44934

Date: 2023-06-16

File Number: LTB-L-019899-23

In the matter of: MAIN FLOOR, 44 FESTOON PL
BRAMPTON ON L6T4R4

Between: Hasan Arif Khan Landlord

And

Earnest Imran Qadir Bakhsh Tenant

Hasan Arif Khan (the 'Landlord') applied for an order to terminate the tenancy and evict Earnest Imran Qadir Bakhsh (the 'Tenant') because the Tenant did not pay rent.

This application was heard by videoconference on June 5, 2023. The Landlord and the Tenant attended the hearing. Both were represented.

Determinations:

Request for Adjournment

1. At the beginning of the hearing, the Tenant requested that I adjourn the application and make an 'interim order' requiring that the Tenant vacate the rental unit on or before July 30, 2023. The Landlord opposed an adjournment on the terms suggested by the Tenant. I denied the Tenant's request.
2. Rule 21.8 of the LTB's Rules of Practice says:

21.8 *A CMH or hearing may be adjourned at the discretion of a Hearing Officer or Member where satisfied that an adjournment is required to permit an adequate hearing to be held. Relevant factors the LTB may consider in deciding the request include:*

- a. the reason for the adjournment and position of the parties;*
- b. the issues in the application;*
- c. any prejudice that may result from granting or denying the request;*
- d. the history of the proceeding including other adjournments or rescheduling; and*

e. the LTB's obligation to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter.

3. In my view an adjournment was not required to permit an adequate hearing to be held.
4. The reason the Tenant wanted an adjournment was that he had retained a legal representative on June 1, 2023 and the Tenant's legal representative needed more time to prepare for the hearing.
5. The Tenant has not paid any rent since May of 2022. The Landlord served an N4 notice on February 15, 2023. At that time, the Tenant owed \$25,300.00.
6. On May 15, 2023, the LTB directed the application be heard on an expedited basis because the arrears were approaching the LTB's monetary jurisdiction. The Tenant was e-mailed the notice of hearing for June 5, 2023 on May 17, 2023 and was aware of the fact that he would be facing eviction on June 5, 2023.
7. When the matter came before me on June 5, 2023, any adjournment would, as a practical matter¹, have resulted in the amount owing by the Tenant exceeding my monetary jurisdiction. That, in my view, would have been prejudicial to the Landlord.
8. While I fully appreciate the Tenant's desire to have legal representation before the LTB, there were no significant issues raised on the L1 that necessitated an adjournment to permit the Tenant's legal representative further time to prepare.
9. In the circumstances, TOP access was not necessary for the Tenant's legal representative to prepare for the hearing. The Tenant had copies of all of the relevant documents that were uploaded to TOP by the Landlord—the N4 notice, the L1 application and the L1/L9 Information Update.
10. The Tenant did not dispute the validity of the N4 and did not raise any technical issues with the N4 or the L1.
11. The Tenant did not dispute the monthly rent or that he had not paid rent as asserted by the Landlord.
12. The Tenant indicated that he disputed the quantum owing, but that dispute was based on the assertion that: (a) the Tenant was entitled to a rent abatement based on the assertion that the Landlord had, at some point, begun to occupy a rental unit in the basement of the residential complex that the Tenant believes was to be included under his tenancy agreement²; and (b) other issues between the Landlord and the Tenant. The Tenant did not, however, raise the issues for the purposes of the L1 in accordance with section 82 of the *Residential Tenancies Act, 2006* (the 'Act') and section 19.4 of the LTB's Rules of Practice. The Tenant was, in my view, not prejudiced by the L1 application proceeding on

¹ The Tenant suggested that I could adjourn for only a few days, but that was not a practical option given the LTB scheduling model.

² Without deciding the matter, I note that an L2 application based on an N12 notice—LTB-L-014007-22—was dismissed because the rental unit as being the entire house as opposed to the 'main floor'. It appears that an L1 application—LTB-L-038494-22—may have been withdrawn for a similar reason.

June 5, 2023 because he was free to bring a stand-alone Tenant application seeking compensation³.

Merits of the Application

13. 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.
14. As of the hearing date, the Tenant was still in possession of the rental unit.
15. The lawful rent is \$2,400.00. It is due on the 1st day of each month.
16. Based on the monthly rent, the daily rent/compensation is \$78.90. This amount is calculated as follows: \$2,400.00 x 12, divided by 365 days.
17. The rent arrears owing to June 30, 2023 are \$34,900.00.
18. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
19. The Landlord collected a rent deposit of \$2,400.00 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.
20. Interest on the rent deposit, in the amount of \$67.10 is owing to the Tenant for the period from October 16, 2021 to June 5, 2023.
21. 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.
22. The Tenant requested that eviction be delayed until July 30, 2023 because his wife is a full-time teacher and wants to finish the school year before having to move. This, in my view, is not, in the circumstances, sufficient justification for delaying eviction. There is no indication that the Tenant intends to pay rent and delaying eviction will result in the amount owing by the Tenant exceeding my jurisdiction. Moreover, the fact that the Tenant's wife is a teacher with a stable job and income begs the question of why the Tenant has not paid any rent since May of 2022.
23. The Tenant also asserted that his son has mental health issues that will make moving difficult. While I appreciate this concern on the part of the Tenant, the prejudice to the Landlord in delaying eviction is such that I am not persuaded that it is appropriate (or fair) to delay eviction.
24. The Landlord, quite correctly, noted that even if a 'standard order' is made, it will be some time before the eviction is enforced by the Court Enforcement Office (Sheriff).

³ The Tenant indicated that he would initiate a stand-alone tenant application.

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:**
 - \$35,086.00 if the payment is made on or before June 27, 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 June 27, 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 27, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$30,613.40. 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 \$78.90 per day for the use of the unit starting June 6, 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 June 27, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 28, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before June 27, 2023, then starting June 28, 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 June 28, 2023.

June 16, 2023**Date Issued**_____
E. Patrick Shea

Vice Chair, 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 December 28, 2023 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 June 27, 2023

Rent Owing To June 30, 2023	\$34,900.00
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	\$35,086.00

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

Rent Owing To Hearing Date	\$32,894.50
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	- \$2,400.00
Less the amount of the interest on the last month's rent deposit	- \$67.10
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	\$30,613.40
Plus daily compensation owing for each day of occupation starting June 6, 2023	\$78.90 (per day)

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