



Order under Section 69 Residential Tenancies Act, 2006

Citation: Daniels Gateway Rental Communities v Yue Yang Rainman Hong, 2023 ONLTB 41502

Date: 2023-06-08

File Number: LTB-L-080187-22

In the matter of: 092, 3035 ARTESIAN DR
MISSISSAUGA ON L5M7S7

Between: Daniels Gateway Rental Communities Landlord

And

Yan Chen Tenants Yue Yang Rainman Hong

Daniels Gateway Rental Communities (the 'Landlord') applied for an order to terminate the tenancy and evict Yan Chen and Yue Yang Rainman Hong (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on May 25, 2023.

The Landlord's Agent Genevieve Chessie and the Landlord's Legal Representative Leo Corsetti and the Tenant Yue Yang Rainman Hong attended the hearing.

Determinations:

1. At the hearing the Landlord relied on oral submissions and referred to documents to support their application. The Tenants were also given an opportunity to provide submissions and evidence.
2. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenants 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.
3. As of the hearing date, the Tenants were still in possession of the rental unit.

4. The lawful rent was \$1,975.05 and it increased to \$2,024.42. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$66.56. This amount is calculated as follows: \$2,024.42 x 12, divided by 365 days.
6. The Tenants have paid \$1,975.05 to the Landlord since the application was filed.
7. The rent arrears owing to May 31, 2023 are \$10,072.73. This amount was not disputed by the Tenants.
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 \$1,975.05 from the Tenants 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 \$463.70 is owing to the Tenants for the period from July 12, 2009 to May 25, 2023.

Section 83 Considerations

11. At the hearing, the Landlord sought an eviction within 11 days of this order. The Landlord's submissions were they attempted to negotiate a payment agreement with the Tenants. They stated an agreement had been reached however the Tenants did not follow through with payments.
12. The Tenant, Mr. Hong testified that he has lived in the rental unit with his wife and children for 15 years. He has had difficulty with income due to Covid-19. Mr. Hong did not give any evidence or submissions related to health or disability issues being experienced by himself for his family.
13. Mr. Hong testified he received an N8 notice of termination from the Landlord and stopped paying rent because he had to "reserve funds in case we lost the case". He also stated that due to previous experiences with the Landlord, and the N8 notice he has withheld the monthly rent. The Tenants requested the Board order a payment plan of approximately six months to address the rent arrears and ongoing monthly rent.
14. Mr. Hong was asked what he did with the rent money he withheld and he stated he had saved it. When asked why he could not use what he'd saved to pay the rent arrears Mr. Hong stated that he has other financial commitments and could not pay the entire amount at once. Mr. Hong also stated that he would need money to find new living accommodations if an eviction was ordered.
15. While I was satisfied the Tenants' monthly income could sustain the tenancy, I was not convinced the Tenants would abide by a conditional order issued by the Board. I say this because the Tenants could have paid the monthly rent and chose not to. A Board order is

not a prerequisite to paying the Landlord what is due and owing. The Tenants have not paid anything to the Landlord in months and could have done so.

16. Since the Tenants felt justified in withholding rent payments from the Landlord, I was not satisfied they no longer felt this way. As a result, I was not convinced the Tenants would adhere to an ordered payment plan.
17. 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 not be unfair to postpone the eviction until June 30, 2023 pursuant to subsection 83(1)(b) of the Act. This additional time is meant to allow the Tenants' children to complete their current school year where they currently attend. It also recognizes the lengthy tenancy but also the interests of the Landlord.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$12,283.15 if the payment is made on or before June 30, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have 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 Tenants may only make this motion once during the tenancy.
4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before June 30, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$7,459.56. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$66.56 per day for the use of the unit starting May 26, 2023 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before June 30, 2023, the Tenants will start to owe interest. This will be simple interest calculated from July 1, 2023 at 6.00% annually on the balance outstanding.
8. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.

9. 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.
10. 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.

June 8, 2023

Date Issued

John Cashmore

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.

Schedule 1
SUMMARY OF CALCULATIONS

A. Amount the Tenants 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	\$14,072.20
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$1,975.05
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$12,283.15

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

Rent Owing To Hearing Date	\$11,687.36
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$1,975.05
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,975.05
Less the amount of the interest on the last month's rent deposit	- \$463.70
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total amount owing to the Landlord	\$7,459.56
Plus daily compensation owing for each day of occupation starting May 26, 2023	\$66.56 (per day)