



Order under Section 69 Residential Tenancies Act, 2006

Citation: Jianguo Qian v Haim Levy, 2023 ONLTB 38914

Date: 2023-05-26

File Number: LTB-L-067859-22

In the matter of: 200 GLENMANOR WAY
VAUGHAN ON L4J3E5

Between: Jianguo Qian Landlord

And

Haim Levy Tenant

Jianguo Qian (the 'Landlord') applied for an order to terminate the tenancy and evict Haim Levy (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on May 11, 2023.

The Landlord's Legal Representative R.W.Yu and the Tenant attended the hearing.

Determinations:

1. The Landlord gave the Tenant a Notice to End Tenancy Early for Non-payment of Rent (N4 Notice) on October 17, 2022, deemed served on October 22, 2022. The N4 Notice claims unpaid rent for the period of October 1, 2022 to October 31, 2022 totalling \$2,689.09. The termination date on the N4 Notice is November 05, 2022. The application was filed on November 15, 2022 and claims that the October and November 2022 rent was unpaid.
2. The lawful rent is \$2,756.22. It is due on the 1st day of each month. The lawful rent was \$2,689.09 till December 31, 2022.
3. The Tenant made a payment of \$5378.18 on December 16, 2022. This payment was to sufficient satisfy the October and November 2022 rent but not the December 2022 rent, which had become due on December 1.
4. Section 59(3) of the *Residential Tenancies Act, 2006* ("Act") addresses how a tenant can void an N4 Notice:

(3) The notice of termination is void if, before the day the landlord applies to the Board for an order terminating the tenancy and evicting the tenant based on the notice, the tenant pays,

- (a) the rent that is in arrears under the tenancy agreement; and

(b) the additional rent that would have been due under the tenancy agreement as at the date of payment by the tenant had notice of termination not been given.
[emphasis added]

5. In this case the Tenant did not void the N4 Notice because rent for December 2022 was due when the Tenant made the payment of \$5378.18 on December 16, 2022.
6. As of the hearing date, the Tenant was still in possession of the rental unit.
7. Based on the Monthly rent, the daily rent/compensation is \$90.62. This amount is calculated as follows: \$2,756.22 x 12, divided by 365 days.
8. The Tenant has paid \$5,378.18 to the Landlord since the application was filed.
9. The rent arrears owing to May 31, 2023 are \$16,470.19.
10. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. The Landlord collected a rent deposit of \$2,600.00 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.
12. Interest on the rent deposit, in the amount of \$251.45 is owing to the Tenant for the period from November 22, 2016 to May 11, 2023.
13. 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.
14. The Tenant asked for extra time to either pay off the arrears or find another unit. Based on the high arrears and the prejudice to the Landlord, I agreed to give him time only until June 30, 2023. The Landlord's Legal Representative agreed to this delay.

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:**
 - \$16,656.19 if the payment is made on or before May 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$19,412.41 if the payment is made on or before June 30, 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 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. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$12,045.34. 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 \$90.62 per day for the use of the unit starting May 12, 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 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 1, 2023 at 6.00% annually on the balance outstanding.
8. 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.
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 1, 2023.

May 26, 2023
Date Issued

 Sheena Brar
 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 December 31, 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 May 31, 2023

Rent Owing To May 31, 2023	\$21,848.37
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$5,378.18
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	\$16,656.19

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before June 6, 2023

Rent Owing To June 30, 2023	\$24,604.59
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$5,378.18
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	\$19,412.41

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

Rent Owing To Hearing Date	\$20,088.97
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$5,378.18
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	- \$2,600.00
Less the amount of the interest on the last month's rent deposit	- \$251.45
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	\$12,045.34
Plus daily compensation owing for each day of occupation starting May 12, 2023	\$90.62 (per day)