



Order under Section 69 Residential Tenancies Act, 2006

Citation: Capreit Limited Partnership v Osamudiamen Aghemen Joseph, 2023 ONLTB 39164

Date: 2023-05-23

File Number: LTB-L-058103-22

In the matter of: 1806-500 Murray Ross Parkway Toronto,
ON M3J 2Z3

Between: Capreit Limited Partnership Landlord

And

Osamudiamen Aghemen Joseph Tenant

Capreit Limited Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Osamudiamen Aghemen Joseph (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on April 26, 2023.

The Landlord's Legal Representative Nidhi Sharma and the Tenant attended the hearing. The Tenant met with Tenant Duty Counsel prior to the hearing.

Determinations:

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 \$1,367.22. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$44.95. This amount is calculated as follows: \$1,367.22 x 12, divided by 365 days.
5. The Tenant has paid \$2,500.00 to the Landlord since the application was filed.

6. The rent arrears owing to April 30, 2023 are \$9,505.80.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,367.22 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.
9. Interest on the rent deposit, in the amount of \$10.86 is owing to the Tenant for the period from January 1, 2023 to April 26, 2023.

Section 83 Considerations

10. The Tenant testified that he acknowledged the arrears and that the COVID-19 pandemic had affected his business that led to financial difficulties.
11. The Tenant offered a payment plan whereby he offered to pay an additional \$300.00 per month in addition to the regular rent. The proposed payment plan would taken nearly 3 years to be completed.
12. Since the application was filed, the Tenant has made a \$1,200.00 payment on October 18, 2022 and a \$1,300.00 payment on December 6, 2022. Since that time the Tenant has not made any payments towards rent or arrears.
13. On a balance of probabilities, I am not satisfied that the Tenant's proposed payment plan is reasonable in the circumstances. I am also not satisfied that the Tenant has a sufficient income source to not only pay back the arrears but to pay the regular rent on time. As such, I do not find that the Tenant's repayment plan is reasonable and will not be implemented in this case.
14. That said, the Tenant testified that he has two young children and has been in the unit since 2014. Eviction will be delayed until the end of June to allow the Tenant to either void the order or to find a new unit.
15. 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.

It is ordered that:

16. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
17. **The Tenant may void this order and continue the tenancy by paying to the Landlord:**
 1. \$11,059.02 if the payment is made on or before May 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

2. \$12,426.24 if the payment is made on or before June 30, 2023. See Schedule 1 for the calculation of the amount owing.
18. 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.
19. **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.**
20. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$8,115.20. 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.
21. The Tenant shall also pay the Landlord compensation of \$44.95 per day for the use of the unit starting April 27, 2023 until the date the Tenant moves out of the unit.
22. If the Tenant does not pay the Landlord the full amount owing on or before June 3, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 4, 2023 at 6.00% annually on the balance outstanding.
23. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
24. 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.
25. 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 23, 2023

Date Issued

Jagger Benham

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 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 | \$13,373.02 |
| Application Filing Fee | \$186.00 |
| Less the amount the Tenant paid to the Landlord since the application was filed | - \$2,500.00 |
| Total the Tenant must pay to continue the tenancy | \$11,059.02 |

B. 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 | \$14,740.24 |
| Application Filing Fee | \$186.00 |
| Less the amount the Tenant paid to the Landlord since the application was filed | - \$2,500.00 |
| Total the Tenant must pay to continue the tenancy | \$12,426.24 |

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

| | |
|--|----------------------|
| Rent Owing To Hearing Date | \$11,807.28 |
| Application Filing Fee | \$186.00 |
| Less the amount the Tenant paid to the Landlord since the application was filed | - \$2,500.00 |
| Less the amount of the last month's rent deposit | - \$1,367.22 |
| Less the amount of the interest on the last month's rent deposit | - \$10.86 |
| Total amount owing to the Landlord | \$8,115.20 |
| Plus daily compensation owing for each day of occupation starting April 27, 2023 | \$44.95 (per day) |