



Order under Section 69 Residential Tenancies Act, 2006

Citation: Ecuhome Corporation v Mark Lindsay, 2023 ONLTB 39724

Date: 2023-05-18

File Number: LTB-L-049541-22

In the matter of: 302, 415 Shaw Street
Toronto Ontario M6J2X4

Between: Ecuhome Corporation Landlord

And

Mark Lindsay Tenant

Ecuhome Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Mark Lindsay (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on April 28, 2023.

The Landlord's legal representative, Catherine Salgado, and the Tenant attended the hearing, at which time the Tenant testified that the Tenant spoke with Duty Counsel.

Determinations:

1. It is not disputed that the Tenant receives a rent-geared-to-income (RGI) subsidy in relation this tenancy. At the start of the hearing the Tenant requested an adjournment in order to attempt to seek internal reviews of RGI decisions made in 2020, 2021 and 2022. The Tenant testified that he has delayed filing these internal reviews because of the January 1, 2022 hearing of a related LTB application, application TST-20107-21. The Tenant testified that this resulted in an order issued on April 1, 2022 which determined that the LTB does not have jurisdiction over the Tenant's claims concerning the calculation of the Tenant's RGI rent.
2. Catherine Salgado testified that the internal review deadlines have passed with respect to the RGI calculations.

3. No evidence was submitted and no submissions were made suggesting the likelihood that these internal reviews would be granted.
4. I denied the Tenant's adjournment request as from the Tenant's testimony there is an insufficient basis to conclude that the Tenant exercised reasonable diligence in seeking to review recalculations in his RGI rent.
5. 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.
6. As of the hearing date, the Tenant was still in possession of the rental unit.
7. The lawful rent is \$470.00. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$15.45. This amount is calculated as follows: $\$470.00 \times 12$, divided by 365 days.
9. The Tenant has paid \$580.00 to the Landlord since the application was filed.
10. Catherine Salgado testified that the rent arrears owing to April 30, 2023 are \$8,293.00.
11. The Tenant testified that he is opposed to this quantum of arrears because the various recalculations of rent that informed the Landlord's formulation of the arrears arose from rent increases that were not made in accordance with the notice provisions of the *Residential Tenancies Act, 2006* (the Act).
12. Given that it is undisputed that the rent charged in this matter is subject to an RGI subsidy, I preferred Catherine Salgado's testimony that the changes in lawful rent resulted solely from recalculations made under the RGI scheme. Pursuant to section 203 of the Act the LTB is prohibited from making determinations on the amount of geared-to-income rent payable under the *Housing Services Act, 2011*. At such, I accepted the Landlord's position on the amount of rent arrears.
13. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
14. There is no last month's rent deposit.
15. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of 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. The Tenant requested 60 days' delayed conditional termination of his tenancy to given him additional time to file internal reviews of the above RGI decisions. Catherine Salgado opposed the request because the Tenant has not paid any rent in a year other than a partial monthly payment on August 28, 2022. In light of my prior determination that the Tenant has not demonstrated that he exercised reasonable diligence in seeking to review recalculations in his RGI rent I determined that it would be inappropriate to grant the relief sought. As well,

given that the Tenant has not paid any rent for a significant period of time I also determined that there is an insufficient basis to conclude that the Tenant will likely pay his rent for the period of the requested relief. Granting the request will likely only exacerbate the Landlord's financial prejudice in this matter.

It is ordered that:

1. The Tenant's request to adjourn the hearing is denied.
2. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
3. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$8,964.00 if the payment is made on or before May 29, 2023. See Schedule 1 for the calculation of the amount owing.
4. 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 May 29, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
5. **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 May 29, 2023**
6. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$8,456.60. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
7. The Tenant shall also pay the Landlord compensation of \$15.45 per day for the use of the unit starting April 29, 2023 until the date the Tenant moves out of the unit.
8. If the Tenant does not pay the Landlord the full amount owing on or before May 29, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 30, 2023 at 6.00% annually on the balance outstanding.
9. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
10. If the unit is not vacated on or before May 29, 2023, then starting May 30, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
11. 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 May 30, 2023.

May 18, 2023

Date Issued

Sean Henry

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 November 30, 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.

*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 May 29, 2023

Rent Owing To May 31, 2023	\$9,343.00
Application Filing Fee	\$201.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$580.00
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	\$8,964.00

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

Rent Owing To Hearing Date	\$8,835.60
Application Filing Fee	\$201.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$580.00
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	- \$
Less the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord	\$8,456.60
Plus daily compensation owing for each day of occupation starting April 29, 2023	\$15.45 (per day)