



Order under Section 69 Residential Tenancies Act, 2006

Citation: Simwanza v Fuamba, 2023 ONLTB 36072

Date: 2023-05-17

File Number: LTB-L-005617-22

In the matter of: 2172 Nepean
Ottawa ON K4A4K4

Between: Cleveland Irving Landlords
Ngoza Simwanza

And

Faith Chantal Fuamba, Tenants
Faith Fuamba,
Joyce Fuamba,
Naomi Fuamba
Yves Fuamba

Cleveland Irving and Ngoza Simwanza (the 'Landlords') applied for an order to terminate the tenancy and evict Faith Chantal Fuamba, Faith Fuamba, Joyce Fuamba, Naomi Fuamba and Yves Fuamba (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on April 27, 2023.

The Landlord's Legal Representative Lorinc Mucsi, the Landlord Ngoza Simwanza and the Tenant's Faith Fuamba and Yves Fuamba attended the hearing.

Determinations:

1. The Landlords 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.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$5,500.00. It is due on the first day of each month.
4. The Tenants disputed what the lawful amount of rent was. The Board considered the Landlord's testimony and reviewed the evidence of the Landlords to show what the rent would be once they were the new owners of the property. The Tenants did not have any

evidence to show anything different, and only testified that they refused to agree to that amount. However, the Tenants continued to reside in the property and did not bring any application to the Board to dispute the Lawful rent. Therefore, the Board was satisfied on a balance of probabilities that the Lawful rent is \$5,500.00.

5. Based on the Monthly rent, the daily rent/compensation is \$180.82. This amount is calculated as follows: \$5,500.00 x 12, divided by 365 days.
6. The Tenants have not made any payments since the application was filed.
7. The rent arrears owing to May 14, 2023 are \$99,000.00.
8. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. There is no last month's rent deposit.
10. The Landlords acknowledged that they are aware that pursuant to subsection 207(3) of the Act that any amounts over the Board's jurisdiction are extinguished. However, the Landlords disagreed what this meant, although advised that the Board has interpreted this to mean that that Landlord could not seek the amount over the jurisdictional limit in any other court of competent jurisdiction, and the Board could not order an amount of arrears owing over this amount in an order. The Landlords were advised that if they wished to pursue the full amount of arrears that that was beyond the Board's jurisdiction. The Landlords requested that the hearing proceed, and the Board issue an order.
11. The Landlord submitted that section 174 of the Act permits the Board to make an order based on jurisdiction. The Board agree's that it can make an order within its jurisdiction, but not an order that exceeds the Board's jurisdiction. This section states that the Board may determine all questions of law and fact "*within its jurisdiction*". The Board has consistently held that it lacks jurisdiction to order arrears of rent over the financial limits set out in section 207(1) of the Act. The Board may find as fact that the Tenants owe greater than this amount, however the Board may not order arrears over this amount to be paid if the tenancy is terminated.
12. The Act's monetary jurisdiction pursuant to subsection 207(1) of the Act permits the Board to order the Tenant to pay the Landlord up to \$35,000.00, plus Board filing costs, if the tenancy is terminated and the Tenant vacates the rental unit. The Divisional Court's reasons in *Horstein et al v. Royal Bank of Canada*, 2010 ONSC 3134 (Div. Ct.) (CanLII), however, permit the Board to determine that the Tenant must pay the full amount of rental arrears owed, if the Tenant wishes to void the order under section 74 of the Act.
13. The Tenant submitted that they had filed an action in the Ontario Superior Court regarding this Landlord and the rental property. However, since the Board has exclusive jurisdiction to decide applications in accordance with subsection 168(2), and that no stay had been issued that an adjournment would not be appropriate.
14. The Tenant admitted that they have not paid any rent to the Landlord, since the Landlord purchased the property in November 2021.

15. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (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.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated unless the Tenant voids this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlords or to the LTB in trust:**
 - \$104,686.00 if the payment is made on or before May 28, 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 Tenant has paid the full amount owing as ordered plus any additional rent that became due after May 28, 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 Tenant must move out of the rental unit on or before May 28, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$35,186.00. This amount includes maximum jurisdictional limit of rent arrears owing up to the date of the hearing and the cost of filing the application that the Board may order in accordance with sub-section 207(1) of the Act. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlords compensation of \$180.82 per day for the use of the unit starting April 28, 2023 until the date the Tenants moves out of the unit.
7. If the Tenants do not pay the Landlords the full amount owing on or before May 28, 2023, the Tenants will start to owe interest. This will be simple interest calculated from May 29, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before May 28, 2023, then starting May 29, 2023, the Landlords 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 Landlords on or after May 29, 2023.

May 19, 2023

Date Issued

Robert Patchett
Vice Chair, Landlord and Tenant Board

André-Paul Baillargeon-Smith
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 November 29, 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 28, 2023

Rent Owing To June 14, 2023	\$104,500.00
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	\$104,686.00

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

Rent Owing To Hearing Date	\$35,000.00
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 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	\$35,186.00
Plus daily compensation owing for each day of occupation starting April 28, 2023	\$180.82 (per day)