



Order under Section 69 Residential Tenancies Act, 2006

Citation: Dakkak v Razaq, 2023 ONLTB 35688

Date: 2023-05-11

File Number: LTB-L-044528-22

In the matter of: 91 BIRCHPARK DR
GRIMSBY ON L3M4M9

Between: Ahmad Shaouki Dakkak Landlord

And

Tenant

Mohammad Razaq

Ahmad Shaouki Dakkak (the 'Landlord') applied for an order to terminate the tenancy and evict Mohammad Razaq (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also claimed charges for NSF cheques.

This application was heard by videoconference on February 14, 2023.

The Landlord, the Landlord's legal representative, Paul Taylor, and the Tenant attended 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. The Tenant disputed being served a copy of the N4 Notice.
3. The Landlord testified that they provided the Tenant service of the N4 Notice by expresspost and also by placing the document under the door on July 27, 2022.
4. On a balance of probabilities, I find that the Landlord served the N4 Notice to the Tenant by placing it under the door of the rental unit.

5. As of the hearing date, the Tenant was still in possession of the rental unit.
6. The lawful rent is \$3,000.00. It is due on the 18th day of each month.
7. Based on the Monthly rent, the daily rent/compensation is \$98.63. This amount is calculated as follows: \$3,000.00 x 12, divided by 365 days.
8. The Tenant has not made any payments since the application was filed.
9. The rent arrears owing to February 17, 2023 are \$21,000.00.
10. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. The Landlord is entitled to \$20.00 for one cheque that was returned NSF for May of 2022.
12. There is no last month's rent deposit.
13. The parties were permitted to file evidence at the hearing. The Tenant suggested that they had sent the Landlord e-transfers in September and October of 2022 and that the Landlord refused to accept the payments.
14. The Landlord did not deny that the Tenant sent the e-transfer in September, but moments later the Tenant cancelled the transfer and the Landlord was unable to accept it.
15. The Tenant further confirmed that the transfer in October was not accepted by the Landlord and deposited back in the Tenants account.
16. I am satisfied that the Tenant has not made any payments to the Landlord and that they revoked their e-transfer to the Landlord in September and that the Landlord did not refuse the payment as the Tenant suggested.
17. The Tenant testified that they lost their job due to Covid and that they just started back to work for a towing company. As of the hearing, the truck was down for repairs.
18. The Tenant proposed that they be able to make monthly payments of \$800 towards the arrears in addition to the rent. The Tenant suggested they make around \$4,000.00 per month towing.
19. The Landlord is receiving ODSP and has very limited income. The Landlord is experiencing a serious financial hardship from the Tenant not paying any rent. The Tenant's last month's rent deposit cheque also bounced. The Tenant has not paid any rent from July 18, 2022 to February 17, 2023. The Landlord is struggling to put food on the table for his family.
20. The Landlord has reached out to the Tenant multiple times to try to work out a payment plan, but the Tenant did not pay the Landlord anything. The Tenant also did not dispute that they responded to one of the Landlord's texts regarding the arrears which stated he would "stay for one fucking year and not give you a dollar".
21. I am not satisfied that a payment plan is appropriate. The Tenant would have the Board believe that the Tenant should be trusted at their word that they can make the payments. However, judging my the payment history and the false accusation that the Landlord

refused an e-transfer when the Tenant knowingly cancelled it, I do not find the Tenant overly trustworthy on their word that they will pay.

22. 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 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:**
 - \$30,206.00 if the payment is made on or before May 17, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$33,206.00 if the payment is made on or before May 22, 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 May 22, 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 May 22, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$20,967.64. 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.
6. The Tenant shall also pay the Landlord compensation of \$98.63 per day for the use of the unit starting February 15, 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 May 22, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 23, 2023 at 6.00% annually on the balance outstanding.
8. The Landlord or the Tenant 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 May 22, 2023, then starting May 23, 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 May 23, 2023.

May 11, 2023

Date Issued

Terri van Huisstede
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 23, 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 17, 2023

Rent Owing To May 17, 2023	\$30,000.00
Application Filing Fee	\$186.00
NSF Charges	\$20.00
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
Total the Tenant must pay to continue the tenancy	\$30,206.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 22, 2023

Rent Owing To June 17, 2023	\$33,000.00
Application Filing Fee	\$186.00
NSF Charges	\$20.00
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
Total the Tenant must pay to continue the tenancy	\$33,206.00

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

Rent Owing To Hearing Date	\$20,761.64
Application Filing Fee	\$186.00
NSF Charges	\$20.00
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
Total amount owing to the Landlord	\$20,967.64
Plus daily compensation owing for each day of occupation starting February 15, 2023	\$98.63 (per day)