



Order under Section 69 Residential Tenancies Act, 2006

Citation: Yu v Orozco, 2023 ONLTB 35812

Date: 2023-05-08

File Number: LTB-L-032432-22

In the matter of: BASEMENT UNIT, 220 FLORA DR SCARBOROUGH
ON M1P1A9

Between: Da Qiang Yu Landlords
Maria Fe Sapalo

And

Tania Orozco Tenant

Da Qiang Yu and Maria Fe Sapalo (the 'Landlords') applied for an order to terminate the tenancy and evict Tania Orozco (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. This is the L1 Application.

The Landlords also applied for an order to terminate the tenancy and evict the Tenant because the Tenant another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant and the Tenant has been persistently late in paying the Tenant's rent. This is the L2 Application.

This application was heard by videoconference on April 20, 2023.

The Landlord, Da Qiang Yu, and the Landlord's Legal Representative, Victoria Marr attended the hearing.

As of 2:54 p.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. The Landlord's Representative submitted a text message sent from the Tenant in which she wrote in part, "I don't know if I'll be one time for court. Also I'm leaving by next weekend to a shelter. If I'm not there on time please let me know what happens." As the Tenant did not appear at the hearing, the hearing proceeded with only the Landlord's evidence.

Determinations:

L1 Application

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 \$2,000.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$65.75. This amount is calculated as follows: \$2,000.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to April 30, 2023 are \$28,400.00.
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 \$2,000.00 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.
9. Interest on the rent deposit, in the amount of \$60.03 is owing to the Tenant for the period from August 1, 2021 to April 20, 2023.
10. The Landlord's Legal Representative submitted that the Landlord is unaware of any circumstances of the Tenant that would cause the termination of the tenancy to be delayed or denied. Since the Tenant did not attend the hearing to give evidence of their circumstances, I am unable to determine if any relief from eviction should be considered.
11. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including 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.

L2 Application

N5 Notice of Termination – non-payment of utilities

12. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated on May 19, 2023.
13. On May 5, 2022, the Landlord gave the Tenant a valid N5 notice of termination ('N5 Notice'). The N5 Notice contained the allegation that for the period of December 2021 to April 2022, the Tenant did not pay the utility bills as set out in the tenancy agreement.
14. The Landlord's Legal Representative submitted the tenancy agreement and outstanding utility bills as evidence. The tenancy agreement shows the Tenant is responsible to pay the Landlord for the hydro, gas, and water utility bills each month. The respective utility bills show the Tenant is in arrears of these accounts in the amount of \$5,385.95.
15. The Landlord's Representative submitted that the Tenant did not void the N5 Notice as no payments for the utility bills were received by Landlord and the monies due for these services continue to accumulate.
16. Based on the uncontested evidence before me and on a balance of probabilities, I am satisfied the Tenant is in breach of the tenancy agreement by not reimbursing the Landlord for the above mentioned utilities. As a result, the application is granted and the tenancy shall be terminated.

N8 Notice of Termination – persistently late rent payments

17. On May 11, 2022, the Landlord gave the Tenant a valid N8 notice of termination ('N8 Notice'). The N8 Notice contains the allegations that for the rental periods of September 2021 to May 2022, the Tenant has persistently failed to pay the rent on the day it is due.
18. The Landlord's Legal Representative submitted a rent ledger in which it shows that each and every month for the above mentioned rental periods, the Tenant has not paid the rent on the first of the month. She further submitted that since February 2022, the Tenant has provided no rent payments to the Landlord.

19. Based on the uncontested evidence before me, and on a balance of probabilities, I am satisfied the Tenant has not paid the monthly rent in full and on the day it was due for a consecutive period of 21 months. As a result, the application is granted and the tenancy shall be terminated.

It is ordered that:

L1 Application

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:**
 - \$30,586.00 if the payment is made on or before May 19, 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 19, 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 19, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$25,840.97. 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 \$65.75 per day for the use of the unit starting April 21, 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 19, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 20, 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 19, 2023, then starting May 20, 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 20, 2023.

L2 Application

11. **Notwithstanding paragraphs 2 and 3 immediately above, the tenancy between the Landlord and the Tenant is terminated pursuant to the L2 Application. This means the Tenant must move out of the rental unit on or before May 19, 2023.**
12. The Tenant shall pay to the Landlord \$5,385.95 for the outstanding utility bills for the period of December 2021 to April 2023.
13. If the Tenant does not pay the Landlord the full amount owing on or before May 19, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 20, 2023 at 6.00% annually on the balance outstanding.
14. If the unit is not vacated on or before May 19, 2023, then starting May 20, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
15. 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 20, 2023.

May 8, 2023

Date Issued

Susan Priest

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 20, 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 as the tenancy is terminated

Rent Owing To Hearing Date	\$27,715.00
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	- \$2,000.00
Less the amount of the interest on the last month's rent deposit	- \$60.03
Amount owing for unpaid utility bills	\$5,385.95
Total amount owing to the Landlord	\$31,226.92
Plus daily compensation owing for each day of occupation starting April 21, 2023	\$65.75 (per day)

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