



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: The Donway East Limited v John Panda, 2023 ONLTB 32811

Date: 2023-04-28

File Number: LTB-L-023099-22

In the matter of: 410, 1053 DON MILLS RD
NORTH YORK ON M3C1W7

Between: The Donway East Limited Landlord

And

Ginette Lubaki and Tenant John Panda

The Donway East Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Ginette Lubaki and John Panda (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on April 13, 2023.

The Landlord's legal representative, Howard Levenson, attended the hearing.

The Tenant, Ginette Lubaki, (GL) also 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. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,396.87. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$45.92. This amount is calculated as follows: $\$1,396.87 \times 12$, divided by 365 days.
5. The Tenant has paid \$3,153.98 to the Landlord since the application was filed.
6. The rent arrears owing to April 30, 2023 are \$14,702.56.
7. The arrears are not in dispute.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$1,353.98 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.
10. Interest on the rent deposit, in the amount of \$28.67 is owing to the Tenant for the period from December 1, 2021 to April 13, 2023.
11. The position of the Landlord is that the arrears have continued to grow since the Landlord filed the application in April 2022. The Tenants have made very little payments since filing the application and the arrears stand at a substantial amount. The Landlord's legal representative submitted the Landlord attempted to enter into a repayment plan with the Tenant in the fall of 2022 and the Tenant did not make any payments on that arrangement.
12. The Landlord is seeking a standard order for eviction and arrears.
13. The position of the Tenants is that GL lost her job during the spring of 2020 due to covid. The arrears started in April 2022. GL testified that while she was off work, she was receiving financial assistance from her family in order to pay her rent. When the family stopped providing the assistance the arrears started to accrue.
14. The Tenant John Panda (JP) lost his job in June 2021. He was employed in IT.
15. As of the day of the hearing, neither of the Tenants are employed and there is no source of income.
16. GL submitted she will be starting work May 8, 2023 back in the daycare field where she was working before.

Relief From Eviction

17. GL submitted that once she starts working her monthly income will be approximately \$2,400.00 per month. The Tenant offered a repayment plan of \$1,000.00 a month, however she did not take into consideration any living expenses.
18. At \$1,000.00 a month the repayment plan would take 15 months.

19. The Landlord's legal representative rejected the Tenants' offer for a repayment plan citing the plan would take too long, even if the Tenants could afford the payment.
20. Based on GL's submissions for repayment and given the quantum of the arrears the Tenants are unable to meet a repayment plan that would repay the Landlord in a reasonable time and allow the Tenants to preserve the tenancy and in my opinion the tenancy is not viable.
21. GL submitted to the Board she received financial assistance information after speaking with Tenant Duty Counsel the day of the hearing, but up to the day of the hearing had not pursued any other financial assistance. GL submitted the Tenants would require 5 months to find alternative housing and apply for financial assistance.
22. The Landlord's legal representative, rejected the GL's request for a 5 month delay order for eviction, however submitted the Landlord is amenable to providing the Tenant time to seek financial assistance and requested an extended order for eviction to May 31, 2023.
23. The Tenants do not have young children living with them.
24. 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 May 31, 2023 pursuant to subsection 83(1)(b) of the Act.
25. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
26. This order contains all reasons for the determinations and order made. No further reasons will be issued.

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:
 - \$14,937.25 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$16,334.12 if the payment is made on or before May 31, 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 31, 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 31, 2023
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$12,754.69. 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 \$45.92 per day for the use of the unit starting April 14, 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 9, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 10, 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 31, 2023, then starting June 1, 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 June 1, 2023.

April 28, 2023

Date Issued

Greg Brocanier

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 December 1, 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 April 30, 2023

Rent Owing To April 30, 2023	\$17,905.23
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,153.98
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	\$14,937.25

B. 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	\$19,302.10
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,153.98
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	\$16,334.12

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

Rent Owing To Hearing Date	\$17,105.32
Application Filing Fee	\$186.00
NSF Charges	\$0.00

Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,153.98
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	- \$1,353.98
Less the amount of the interest on the last month's rent deposit	- \$28.67
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	\$12,754.69
Plus daily compensation owing for each day of occupation starting April 14, 2023	\$45.92 (per day)