



Order under Section 69 Residential Tenancies Act, 2006

Citation: Chong v Kalenuik, 2023 ONLTB 33775

Date: 2023-04-27

File Number: LTB-L-071758-22

In the matter of: 64 FRANK KELLY DR
HOLLAND LANDING ON L9N0V2

Between: Kim Man Chong Landlord

And

Caleb Kalenuik Tenant

Kim Man Chong (the 'Landlord') applied for an order to terminate the tenancy and evict Caleb Kalenuik (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Tenant has been persistently late in paying the Tenant's rent.

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

The Landlord, the Landlord's legal representative, P.S. Cheung, and the Tenant attended the hearing.

Determinations:

L2 Application:

1. The Tenant has been persistently late in paying the monthly rent.

L1 Application:

2. 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.
3. As of the hearing date, the Tenant was still in possession of the rental unit.

4. The lawful rent is \$2,650.00. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$87.12. This amount is calculated as follows: \$2,650.00 x 12, divided by 365 days.
6. The Tenant has not made any payments since the application was filed.
7. The rent arrears owing to March 31, 2023 are \$21,200.00.
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 \$2,650.00 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.
10. Interest on the rent deposit, in the amount of \$91.88 is owing to the Tenant for the period from May 1, 2020 to March 27, 2023.
11. The Tenant said that he can pay the rent on time going forward. He said that he was working as a sales person for phone systems, and he lost his job 8 months ago, and he has been struggling financially.
12. The Tenant said that he was ineligible for assistance when he lost his job because he was classified as self-employed. He said that he sold assets to get by, and he has been living off his credit cards. He said that he has also been obliged to make support payments to his wife.
13. The Tenant said that he has now been working in IT at his old company for the last 90 days, for a salary of \$60-65,000.00 plus commissions and bonuses. He did not have any documentary evidence to support his testimony about his current job or salary. He said that he has not looked for anywhere else to live because he believed that the Landlord would be reasonable. The Tenant's response to the Landlord's legal representative when asked why he had not made any payment in the last 90 days was that he "had no problem with doing that".
14. The Landlord said that he is seeking eviction because his carrying cost for the rental unit is about \$3,800.00 per month for the mortgage, property tax and insurance. He said that he has had to borrow money from family members to maintain the rental unit, and to avoid going into default on his mortgage. He said that he can no longer afford the unit.
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 I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. In particular, there is evidence that the Landlord wrote to the Tenant to propose repayment a number of times, but the Tenant did not respond. The Tenant had no documentary evidence of any income, and he has not paid anything at all for months. The arrears are substantial, and the Landlord is unable to continue maintaining the rental unit with no rent payments. If the Tenant is able to void the order, then he will be ordered to pay the rent on time and in full for the next 12 months.

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:**
 - \$24,036.00 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$26,686.00 if the payment is made on or before May 8, 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 8, 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 8, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$18,346.36. 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 \$87.12 per day for the use of the unit starting March 28, 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 8, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 9, 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 8, 2023, then starting May 9, 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 9, 2023.

L2 Application

11. If the Tenant voids the eviction order pursuant to paragraphs 2 or 3 of the order, then for the 12-month period commencing on June 1, 2023, and ending on May 1, 2024, the Tenant shall pay the rent on or before the first day of each of those months, respectively.
12. Section 78 of the *Residential Tenancies Act, 2006* applies to paragraph 11 of this order. If the Tenant fails to make any payment, the Landlord may, without notice to the Tenant, apply to the Board for an order terminating the tenancy and evicting the Tenant. The Landlord must make this application no later than 30 days after the Tenant fails to make a payment.

April 27, 2023
Date Issued

Nancy Morris
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 9, 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 April 30, 2023

Rent Owing To April 30, 2023	\$23,850.00
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	\$24,036.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 8, 2023

Rent Owing To May 31, 2023	\$26,500.00
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	\$26,686.00

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

Rent Owing To Hearing Date	\$20,902.24
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	- \$2,650.00
Less the amount of the interest on the last month's rent deposit	- \$91.88
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	\$18,346.36
Plus daily compensation owing for each day of occupation starting March 28, 2023	\$87.12 (per day)