



Order under Section 69 Residential Tenancies Act, 2006

Citation: Amstar Pool I LP v Seymour Claud Gibbs, 2023 ONLTB 33486

Date: 2023-04-26

File Number: LTB-L-000636-23

In the matter of: 703-2757 Kipling Avenue Etobicoke,
ON M9V 4C4

Between: A mstar Pool I LP Landlord

And

Seymour Claud Gibbs Tenant

Amstar Pool I LP (the 'Landlord') applied for an order to terminate the tenancy and evict Seymour Claud Gibbs (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on April 11, 2023.

The Landlord's Legal Representative Moez Nabi and the Tenant's representative Paula Hamilton 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 \$1,343.19. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$44.16. This amount is calculated as follows: \$1,343.19 x 12, divided by 365 days.

5. The Tenant has paid \$1,800.00 to the Landlord since the application was filed.
6. The rent arrears owing to April 30, 2023 are \$7,470.59.
7. The Landlord is entitled to \$20.00 to reimburse the Landlord for administration charges and \$5.00 for bank fees the Landlord incurred as a result of 1 cheque given by or on behalf of the Tenant which was returned NSF.
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 \$1,317.77 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 \$18.92 is owing to the Tenant for the period from April 1, 2021 to April 11, 2023.

Section 83 Considerations

11. The Tenant's representative testified that she was appearing on behalf of the Tenant because the Tenant had a medical emergency and couldn't attend the hearing.
12. The Tenant's representative offered a payment plan where by the regular rent would be on the 1st of the month time, and the Tenant would pay \$500.00 per month on the 20th of each month in order to repay the arrears. The Tenant's representative submitted that the Tenant's son lives in the unit, as well.
13. The Landlord's Legal Representative disagreed with the proposed payment plan and outlined that the Tenant will not pay rent for large durations of time, including no rent having been paid from October 2022, until February 2023.
14. On the basis of the evidence I have considered from both parties, I am not satisfied that the Tenant's payment plan is viable. The Tenant was unable to outline with their income or employment is, and no reason was provided for the lack of rent payments.
15. Eviction will be ordered but will be delayed until the end of June due to the Tenant's medical emergency.
16. 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 June 30, 2023 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

17. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
18. **The Tenant may void this order and continue the tenancy by paying to the Landlord:**

1. \$7,681.59 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

2. \$9,024.78 if the payment is made on or before May 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

3. \$10,367.97 if the payment is made on or before June 30, 2023. See Schedule 1 for the calculation of the amount owing.

19. 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 June 30, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.

20. 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 June 30, 2023.

21. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$5,487.47. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. 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.

22. The Tenant shall also pay the Landlord compensation of \$44.16 per day for the use of the unit starting April 12, 2023 until the date the Tenant moves out of the unit.

23. If the Tenant does not pay the Landlord the full amount owing on or before May 7, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 8, 2023 at 6.00% annually on the balance outstanding.

24. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

25. If the unit is not vacated on or before June 30, 2023, then starting July 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

26. 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 July 1, 2023.

April 26, 2023

Date Issued

Jagger Benham

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 January 1, 2024 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	\$9,270.59
Application Filing Fee	\$186.00
NSF Charges	\$25.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,800.00
Total the Tenant must pay to continue the tenancy	\$7,681.59

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	\$10,613.78
Application Filing Fee	\$186.00
NSF Charges	\$25.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,800.00
Total the Tenant must pay to continue the tenancy	\$9,024.78

C. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before June 30, 2023

Rent Owing To June 30, 2023	\$11,956.97
Application Filing Fee	\$186.00
NSF Charges	\$25.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,800.00
Total the Tenant must pay to continue the tenancy	\$10,367.97

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

Rent Owing To Hearing Date	\$8,413.16
Application Filing Fee	\$186.00
NSF Charges	\$25.00

Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,800.00
Less the amount of the last month's rent deposit	- \$1,317.77
Less the amount of the interest on the last month's rent deposit	- \$18.92
Total amount owing to the Landlord	\$5,487.47
Plus daily compensation owing for each day of occupation starting April 12, 2023	\$44.16 (per day)