



Order under Section 69 Residential Tenancies Act, 2006

Citation: Huang v De Abreu, 2023 ONLTB 33445

Date: 2023-04-26

File Number: LTB-L-052816-22

In the matter of: 105 MILEY DR
MARKHAM ON L3R4V2

Between: Wenjian Zhang and Xiaohua Huang Landlords

And

Eon De Abreu and Toshica De Abreu Tenants

Wenjian Zhang and Xiaohua Huang (the 'Landlords') applied for an order to terminate the tenancy and evict Eon De Abreu and Toshica De Abreu (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on March 30, 2023. Both Landlords attended the hearing and an interpreter Alex Cho attended the hearing to interpret in the Cantonese language for both Landlords. The Landlords' legal representative Kok Chew Chang attended the hearing. The Tenant Toshica De Abreu attended the hearing on behalf of both Tenants and declined speaking with duty counsel prior to the hearing.

At the time of this hearing, the arrears claimed by the Landlords exceed the Board's monetary jurisdiction of \$35,000.00 plus the cost of the application filing fee of \$186.00. At the hearing, the Landlords were advised that proceeding with this application before the Board would result in extinguishing their ability to file a claim in court. The Landlords stated that they want to proceed with their application at the Board and understood the Board's maximum monetary jurisdiction would limit the amount which can be ordered by the Board to \$35,000.00 plus \$186.00 for the application filing fee.

Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenants 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 Tenants were still in possession of the rental unit.
3. The lawful rent is \$2,550.00. It is due on the 13th day of each month.
4. Based on the monthly rent, the daily rent/compensation is \$83.84. This amount is calculated as follows: \$2,550.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing are \$35,700.00 up to March 31, 2023.
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 \$2,550.00 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. No interest has been on the rent deposit since it was collected by the Landlords on February 13, 2020.

Payment of rent

10. The Landlords' property manager Sandy Zhou testified that the monthly rent was to be paid by the Tenants by bank draft which could be dropped off at the office of Sandy Zhou or the Tenants could pay the monthly rent by e-transfer to Sandy Zhou's email address.
11. Sandy Zhou stated that she stopped receiving bank drafts and e-transfers for the monthly rent from the Tenants starting in March 2021. She stated that she contacted the Tenants and was advised that they will pay the monthly rent. She stated that she never refused payment of the rent from the Tenants. She stated further requests were made via text message and email to the Tenants for payment of the rent but the Tenants did not respond to her requests. She stated she last received an email from the Tenant Toshica De Abreu in November 2021 and from January 2023 – March 2023, she has not had any contact with the Tenants.
12. The Landlords testified that the Tenants agreed to a payment plan for the arrears on November 25, 2021. The Landlords stated the Tenants made a payment of \$10,000.00 towards the arrears which was not disputed by the Tenants. The Landlords stated no further payments were made towards the arrears which the Tenant disputed.
13. The Tenants agreed that the rent was to be paid to Sandy Zhou and stated they have not had any contact with Sandy Zhou since March 2022. The Tenants stated that Sandy Zhou was their contact and they had no contact information for the Landlords. The Tenants stated in October and November 2022, they tried contacting Sandy Zhou by telephone to discuss a repayment of the arrears and left voice mail messages but their telephone calls were not returned.

14. The Tenants testified there is a shoe box located at the residential complex and any mail which came to the residential complex for the Landlords was placed inside the shoebox. The Tenants stated that on Nov 2, 2022, a bank draft in the amount \$17,850.00 made payable to the Landlords was placed in the shoebox by the Tenants. The Tenants stated the bank draft was picked up between November 2022 and early December 2022 as the Tenants did not see the bank draft in the shoes box after early December 2022. The Landlords and Sandy Zhou stated they did not receive this bank draft.
15. The Tenants stated that a copy of this bank draft had been sent into the Board prior to the hearing but the Tenants could not confirm a copy of the bank draft had been submitted to the Landlords. The Landlords stated they did not receive a copy of the bank draft. At the time of the hearing, a copy of the bank draft had not been uploaded to the Tribunals Ontario Portal, nor was a copy produced at the hearing. The Tenants could not provide confirmation that the bank draft had been cashed.
16. The Tenants stated at the hearing that they wanted to enter into a payment plan with the Landlords for the repayment of the arrears but the Landlords opposed a payment plan and requested a standard order.

Section 83 consideration

17. The Tenant Toshica De Abreu had a baby in September 2022. The Tenants stated they will face financial hardship if they are evicted and stated they require 6-8 weeks to find another place to move to.

Analysis

18. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of 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 *Residential Tenancies Act, 2006* (the 'Act').
19. I accept the Landlord's evidence that they entered into a payment plan for the arrears with the Tenants in November 2021 and the Tenants made a payment of \$10,000.00 as this evidence was not disputed by the Tenants. Therefore, I find the Landlords attempted to negotiate a repayment of the arrears with the Tenants without success and the Landlords have satisfied their requirement under s. 83(6) of the Act.
20. I am not persuaded by the Tenants submission that on November 2, 2022 they provided a bank draft in the amount of \$17,850.00 and placed it inside a shoebox at the residential complex for the Landlords to access. This is because a copy of this bank draft was not produced for the hearing, or any confirmation that it was cashed. Therefore, I accept what

the Landlords claim, that there have been no payments made by the Tenants since the application was filed.

21. The Landlords did not consent to a payment plan for the arrears and I will not impose one. The arrears are significant and exceed the Board's monetary jurisdiction. Further, the Tenants have not provided a reasonable explanation as to why they stopped paying the monthly rent for a significant amount of time. While the Tenants stated that telephone calls made to Sandy Zhou in October 2022 and November 2022 were not responded to, the Tenants did not provide further evidence which supports they attempted to make payments towards the rent, other than a bank draft in the amount of \$17,850.00 on November 2, 2022 which I found was not persuasive.
22. At the hearing, I made an oral ruling that the tenancy is terminated but I reserved on the termination date of tenancy. I stated at the hearing that the termination date of the tenancy would not be postponed for 6-8 weeks as requested by the Tenants because the amount of the arrears already exceed the Board's monetary jurisdiction. The timespan for the date of issuance of this order from the date of the hearing is almost one month. I find this has provided the Tenants with additional time to look for another place to move to.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenant voids this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$35,186.00 (maximum amount within the Board's monetary jurisdiction) if the payment is made on or before May 7, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after May 7, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before May 7, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$33,156.41. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$83.84 per day for the use of the unit starting until the date the Tenants move out of the unit.

7. If the Tenants do not pay the Landlord the full amount owing on or before May 7, 2023, the Tenants will start to owe interest. This will be simple interest calculated from May 8, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before May 7, 2023, then starting May 8, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 8, 2023.

April 26, 2023

Date Issued

Kimberly Parish

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 8, 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before May 7, 2023

Rent Owing To May 12, 2023	\$39,256.08
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Total the Tenants must pay to continue the tenancy (maximum permitted within Board's monetary jurisdiction)	\$35,186.00

B. Amount the Tenants must pay if the tenancy is terminated

Rent Owing To Hearing Date of March 30, 2023	\$35,616.16
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$2,550.00
Less the amount of the interest on the last month's rent deposit	- \$95.75
Total amount owing to the Landlord	\$33,156.41
Plus daily compensation owing for each day of occupation starting March 31, 2023	\$83.84 (per day)