



Order under Section 69 Residential Tenancies Act, 2006

Citation: Sayed Ashraf Habibzai v Maureen Smith, 2023 ONLTB 32809

Date: 2023-04-24

File Number: LTB-L-055861-22

In the matter of: Unit #2, 56 KING ST W
BOWMANVILLE ON L1C1R4

Between: Sayed Ashraf Habibzai Landlord

And

Maureen Smith and Taffarel Dashown Smith Tenants

Sayed Ashraf Habibzai (the 'Landlord') applied for an order to terminate the tenancy and evict Maureen Smith and Taffarel Dashown Smith (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

This application was heard by videoconference on April 12, 2023.

The Landlord, represented by Suzanne Bemrose Diamond, a licensed Paralegal. and the Tenants attended the hearing. Renatra Ferguson, the Tenant's granddaughter, attended the hearing as a support to Maureen Smith.

Preliminary Issue:

1. At the beginning of hearing the Tenants requested an adjournment. Tenant Maureen Smith submitted that she has filed a T6 Application, a "Tenant Application about Maintenance" (the "T6 Application") and required the T6 application to be heard today along with the L1 Application – Application to Evict a Tenant for Non-Payment of Rent and to Collect Rent the Tenant Owes (the "L1 Application") scheduled to be heard today.
2. The Tenants further emphasized that they have spent more than \$100,000.00 to repair the unit.
3. The Landlord's representative opposed the adjournment request stating that the Landlord had purchased the property in February 2022, that the Landlord had recently renewed the mortgage on the property, and because the Tenants have not paid the rent due it is placing a financial hardship on the Landlord.

4. My ruling was that I would not grant the adjournment request for the L1 Application before me, nor would I consent to adding and hearing the T6 application together with the L1 Application that had already been scheduled. Neither party had submitted any documents in support of the T6 Application and based on the preliminary overview provided by the both the Tenants and Landlord it appears that the T6 Application may be require significant time to hear. The Tenants have already filed their T6 Application and have not provided any compelling reasons that would indicate any prejudice to their application if it were not heard together with the L1 Application. The T6 Application will be scheduled according to the Board's usual scheduling process.

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 \$1,640.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$53.92. This amount is calculated as follows: \$1,640.00 x 12, divided by 365 days.
5. The Tenants have paid \$2,552.00 to the Landlord since the application was filed.
6. The rent arrears owing to April 30, 2023 are \$11,608.00.
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 \$1,600.00 from the Tenants 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 \$42.65 is owing to the Tenants for the period from September 11, 2021 to April 12, 2023.
10. 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. The Tenants have submitted that the granddaughter has moved into the unit with her child and would require additional time to locate alternative accommodation.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants 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:**

- \$11,794.00 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$13,434.00 if the payment is made on or before May 31, 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 31, 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 31, 2023**
 5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$9,158.39. 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 \$53.92 per day for the use of the unit starting April 13, 2023 until the date the Tenants moves out of the unit.
 7. If the Tenants do not pay the Landlord the full amount owing on or before May 5, 2023, the Tenants will start to owe interest. This will be simple interest calculated from May 6, 2023 at 6.00% annually on the balance outstanding.
 8. The Landlord or the Tenants 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 24, 2023

Date Issued

Peter Pavlovic

Member, Landlord and Tenants 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.

**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 April 30, 2023

Rent Owing To April 30, 2023	\$14,160.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$2,552.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$11,794.00

B. Amount the Tenants 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	\$15,800.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$2,552.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$13,434.00

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

Rent Owing To Hearing Date	\$13,167.04
Application Filing Fee	\$186.00
NSF Charges	\$0.00

Less the amount the Tenants paid to the Landlord since the application was filed	- \$2,552.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,600.00
Less the amount of the interest on the last month's rent deposit	- \$42.65
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total amount owing to the Landlord	\$9,158.39
Plus daily compensation owing for each day of occupation starting April 13, 2023	\$53.92 (per day)