



Order under Section 69 Residential Tenancies Act, 2006

Citation: Kim v Black, 2023 ONLTB 31728

Date: 2023-04-21

File Number: LTB-L-053379-22

In the matter of: 4, 1 ELGIN ST N
ACTON ON L7J2B2

Between: Kyoontae Kim Landlord

And

Kelly Black Tenant

Kyoontae Kim (the 'Landlord') applied for an order to terminate the tenancy and evict Kelly Black (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 30, 2023.

The Landlord and the Tenant attended the hearing.

Determinations:

1. The Certificate of Service to the Board the Landlord submitted to the Board for the Notice to End Tenancy Early for Non-payment of Rent (N4 Notice) does not indicate the date it was served. The Landlord testified that he served the Tenant with the N4 on in person on September 2, 2022. The Tenant agreed with the oral testimony of the Landlord that he did serve on September 2, 2022 and in person. The termination date on the N4 was September 16, 2022. Therefore, the N4 was given to the Tenant 14 days before the termination date as required by section 59(1) of the *Residential Tenancies Act, 2006* ("Act"), and I am satisfied that the Landlord served the Tenant as per s.191(2) of the Act.
2. The Landlord dated the N4 for September 17, 2022, which is same the day he signed the L1 application. I find that this an error made by an inexperienced Landlord and that the N4 was served to the Tenant appropriately.

3. The Tenant did not void the N4 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.
4. As of the hearing date, the Tenant was still in possession of the rental unit.
5. The lawful rent is \$1,000.00. It is due on the 1st day of each month.
6. Based on the Monthly rent, the daily rent/compensation is \$32.88. This amount is calculated as follows: \$1,000.00 x 12, divided by 365 days.
7. The Tenant has not made any payments since the application was filed.
8. The rent arrears owing to March 31, 2023 are \$8,348.13.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. The Landlord collected a rent deposit of \$1,000.00 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.
11. Interest on the rent deposit, in the amount of \$48.45 is owing to the Tenant for the period from September 1, 2019 to March 30, 2023.

Section 83 considerations

12. 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.
13. The Tenant testified that the Landlord is also her ex-employer and when her father passed away sometime in June 2022, she went on a medical leave till August 2022. Once she was ready to return back to work, the Landlord never gave her a response respecting her work schedule. She found another job in January 2023 and is now able to pay rent plus make an additional \$250.00 against rent arrears. She also added that the Halton Region Housing will be able to pay off her rent arrears.
14. The Landlord testified that he runs a restaurant in the same complex where the Tenant resides on top of the restaurant. The Tenant had not taken a medical leave but had left the job, so he hired another person. Since it is a small establishment, he does not require a lot of employees and her not showing up caused him much hardship. The Landlord further added that he has tried reaching the Tenant multiple times, but she has never reached out even though he is available in the complex everyday. He does not think that the Tenant will be able to afford the rent plus additional payments. The Landlord stated that he has always been helpful towards the Tenant but she has not made a single payment towards rent since July 2022.
15. Based on what the Tenant told me about her financial circumstances, I do not find it likely that the Tenant will be able to pay the new rent that becomes due and also pay off the

arrears in a reasonable timeframe. Paying an additional \$250.00 each month towards the arrears would be financially challenging and it would take almost 3 years for the arrears to be paid off. I find that such a lengthy repayment plan would be unfair to the Landlord. However, I am willing to grant her additional time to find another suitable accommodation or come up with rent arrears from Halton Region Housing.

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:**
 - \$9,534.13 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$10,534.13 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 \$7,472.08. 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 \$32.88 per day for the use of the unit starting March 31, 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 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 1, 2023 at 6.00% annually on the balance outstanding.
8. 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.
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 June 1, 2023.

April 21, 2023

Date Issued

Sheena Brar

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 3, 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	\$9,348.13
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	\$9,534.13

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 2, 2023

Rent Owing To May 31, 2023	\$10,348.13
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	\$10,534.13

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

Rent Owing To Hearing Date	\$8,334.53
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	- \$1,000.00
Less the amount of the interest on the last month's rent deposit	- \$48.45
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	\$7,472.08
Plus daily compensation owing for each day of occupation starting March 31, 2023	\$32.88 (per day)