



Order under Section 69 Residential Tenancies Act, 2006

Citation: Udari Maheeka Basnayake v Chanthirakas Sivasubramaniam, 2023 ONLTB 31390

Date: 2023-04-17

File Number: LTB-L-075921-22

In the matter of: Upper Level, 53 VODDEN ST W BRAMPTON
ON L6X2W6

Between: Nimal Dissanayake and Udari Maheeka Landlords
Basnayake

And

Chanthirakas Sivasubramaniam and Kasine Tenants Chanthirakas

Nimal Dissanayake and Udari Maheeka Basnayake (the 'Landlords') applied for an order to terminate the tenancy and evict Chanthirakas Sivasubramaniam and Kasine Chanthirakas (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe. (L1 application)

The Landlords also applied for an order to terminate the tenancy and evict the Tenants because the Tenants have been persistently late in paying the Tenants' rent. The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date. (L2 application)

These L1 and L2 applications were heard by videoconference on April 5, 2023.

The Landlords and one of the Tenants, Chanthirakas Sivasubramaniam, attended the hearing. The Tenant who was present declined the chance to consult with Tenant Duty Counsel.

Determinations:

L1 Application

1. The Landlords 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 monthly rent is \$2,150.00. It is due on the 1st day of each month.
4. Based on the monthly rent, the daily rent/compensation is \$70.68. This amount is calculated as follows: \$2,150.00 x 12, divided by 365 days.
5. The Tenants have paid \$10,750.00 to the Landlords since the L1 application was filed.
6. Based on the submissions of the Landlords, the rent arrears owing to April 30, 2023 are \$2,150.00. The Tenant who was present agreed with this amount owing.
7. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlords collected a rent deposit of \$2,150.00 from the Tenants and this deposit is still being held by the Landlords. 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 \$40.82 is owing to the Tenants for the period from December 25, 2021 to April 5, 2023.
10. The Tenants stated that they are able to pay the total amount of \$2,336.00 on or before April 20, 2023 and requested this date as their deadline for voiding. The Landlords agreed with the shortened voiding date, and based on the respective submissions, I consented to setting April 20, 2023 as the voiding date of this L1 order. In my view, this shorter timeframe demonstrated a good faith, firm intention of the Tenants to bring their tenancy into good standing.

L2 Application

11. The N8 notice was served on the Tenants on November 25, 2022 and identified a termination date of January 31, 2023.
12. Based on the submissions, I find the Tenants have persistently paid their rent late. The N8 notice set out 'late payment' particulars and during the hearing, it was established that the Tenants have been late in paying their rent for every month of the tenancy starting from February 1, 2022 to the current month (April 1, 2023).
13. The Tenant present did not dispute the persistent lateness of rents being paid and offered an explanation as to the reasons for their continuous lateness.
14. The Landlords requested that a non-remedial termination be granted under the L2 application.

15. The Tenants requested relief from eviction by asking for a conditional order that would allow them to continue their tenancy. The Tenant present stated the Tenants will ensure they pay their rents in full and on time going forward, starting on May 1, 2023.

Section 83 for Both the L1 and L2 Applications

16. 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 Landlords attempted to negotiate a repayment agreement with the Tenants, and find that for the L1 application, it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act, and for the L2 application, it would not be unfair to grant relief from eviction subject to the condition(s) set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

It is ordered that:

L1 Application

1. The tenancy between the Landlords and the Tenants is terminated unless the Tenants void this order.

To void this L1 part of the order

2. **The Tenants may void this order and continue the tenancy by paying to the Landlords or to the LTB in trust:**
 - \$2,336.00 if the payment is made on or before April 20, 2023. See Schedule 1A 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 April 20, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.

If the Tenants do not void this L1 order

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 April 20, 2023.**
5. As of the date of the hearing (April 5, 2023), the amount of the rent deposit and interest the Landlords owe on the rent deposit exceeds the arrears of rent, compensation and the cost of filing the application the Landlords are entitled to by \$1,651.42. See Schedule 1B for the calculation of the amount owing. However, the Landlords are authorized to deduct from the amount owing to the Tenants \$70.68 per day for compensation for the use of the unit starting April 6, 2023 until the date the Tenants move out of the unit.

6. If the unit is not vacated on or before April 20, 2023, then starting April 21, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. 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 April 21, 2023.
8. The Landlords or the Tenants shall pay to the other any sum of money that is owed as a result of this order.

L2 Application

9. If the Tenants void the L1 portion of this order by paying the Landlords the full amount owing in compliance with paragraph 2 above, the Tenants may remain in the unit, but only if they pay the Landlords the monthly rent owing for the rental unit, on time and in full on the first (1st) day of the month, for 12 months from May 1, 2023 to April 1, 2024 inclusively.
10. If the Tenants fail to make any one of the payments ordered in paragraph 9 above in full and on time, the Landlords may apply under section 78 of the *Residential Tenancies Act, 2006*, without notice to the Tenants and without a hearing, for an order terminating the tenancy and evicting the Tenants. The Landlords must make this application no later than 30 days after the Tenants' failure to make a payment.

April 17, 2023

Date Issued

Alex Brkic

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 October 29, 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.

*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

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 20, 2023

Rent Owing To April 30, 2023	\$12,900.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$10,750.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Total the Tenants must pay to continue the tenancy	\$2,336.00

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

Rent Owing To Hearing Date (April 5, 2023)	\$11,103.40
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$10,750.00
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	- \$2,150.00
Less the amount of the interest on the last month's rent deposit	- \$40.82
Total amount owing to the Landlords (this is a credit balance in favour of the Tenants)	\$(1,651.42)
Plus daily compensation owing for each day of occupation starting April 6, 2023	\$70.68 (per day)