



Order under Section 69 Residential Tenancies Act, 2006

Citation: Shaikh v Rosswest, 2023 ONLTB 28982

Date: 2023-04-06

File Number: LTB-L-041417-22

In the matter of: 423, 4673 JANE ST
NORTH YORK ON M3N 2L1

Between: Bibi Zohera Shaikh Landlords
Sikandar Shaikh

And

Rogas Rosswest Tenant

Bibi Zohera Shaikh and Sikandar Shaikh (the 'Landlords') applied for an order to terminate the tenancy and evict Rogas Rosswest (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 27, 2023 at 3:42 p.m.

The Landlord Sikandar Shaikh and the Tenant Rogas Rosswest attended the hearing.

Determinations:

1. The Landlords 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 \$1,250.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$41.10. This amount is calculated as follows: \$1,250.00 x 12, divided by 365 days.
5. The Tenant has paid \$2,600.00 to the Landlords since the application was filed.
6. The rent arrears owing to February 28, 2023 are \$14,900.00.
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 \$900.00 from the Tenant 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 \$160.98 is owing to the Tenant for the period from March 2, 2012 to February 27, 2023.

Relief from Eviction

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 April 30, 2023 pursuant to subsection 83(1)(b) of the Act.

Serious Breach of Landlord's Responsibilities

11. The Tenant alleged that there have been ongoing maintenance problems with the unit and submitted that these circumstances result in mandatory refusal of eviction under subsection 83(3)(a) of the Act. That section states that the Board must deny eviction when "the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement."
12. The events alleged by the Tenant include a sink and cupboard falling off the wall and flooding in the unit leading to water accumulating in the unit causing damage to the floor.
13. The Tenant testified the flooding occurred between September 2022 and October 2022.
14. It is undisputed that the Landlord's agent came with a pump and resolved the flooding issue on October 22, 2022. The Tenant claimed it only resolved the flooding issues and the floor still need to be repaired where it was damaged as a result of the flooding.
15. The Tenant testified the sink and cupboard maintenance issue originally occurred in 2020 and the item is back currently in use; however, an unsightly wooden board is currently being used to reenforce the unit.
16. Subsection 83(3)(a) of the Act speaks in the present tense, thus I cannot consider past breaches that have been remedied. Although the Tenant claims the problems are ongoing, the evidence before me suggests that the Landlords have addressed the flooding at one point mitigating the severity of the issue. The use of the word "serious" in subsection 83(3)(a) establishes that not all breaches of the Landlord's responsibilities can be considered; only those determined by the Member to be serious will invoke section 83(3) of the Act. Even if all of these issues were ongoing, I am not satisfied based on the Tenant's evidence or description of them that the matters, alone or in the aggregate, constitute a serious breach of any responsibilities of the Landlords under the Act.

Other Circumstances

17. 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 April 30, 2023 pursuant to subsection 83(1)(b) of the Act.
18. The Tenant testified he is the primary caregiver for his two school aged children, 6 and 8 years old. The Tenant expressed that it would be a hardship to find a new affordable unit

due to his family situation and requested additional time to complete a housing search. I accept that finding a new rental unit will be challenging for the Tenant.

19. The Landlord testified the Tenant has previously agreed to payment plans and has never lived up to these commitments and submitted into evidence a signed payment plan dated May 29, 2022, that was not followed, to support this testimony. The Landlord asserted that the amount of arrears is significant, and any delay would be prejudicial.
20. I am persuaded by the Tenant's testimony with respect to challenges finding an appropriate unit for his family and find that it would not be unfair to postpone the eviction until April 30, 2023.

It is ordered that:

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**
 - \$17,586.00 if the payment is made on or before April 30, 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 April 30, 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 April 30, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$13,983.92. 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 Landlords owe 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 Landlords compensation of \$41.10 per day for the use of the unit starting February 28, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlords the full amount owing on or before April 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 1, 2023 at 6.00% annually on the balance outstanding.
8. The Landlords or the Tenant 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 April 30, 2023, then starting May 1, 2023, the Landlords 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 Landlords on or after May 1, 2023.

April 6, 2023
Date Issued

Greg Witt
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 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 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	\$17,400.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords 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 Landlords owe 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	\$17,586.00

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

Rent Owing To Hearing Date	\$14,858.90
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords 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	- \$900.00
Less the amount of the interest on the last month's rent deposit	- \$160.98
Less the amount the Landlords owe 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 Landlords	\$13,983.92
Plus daily compensation owing for each day of occupation starting February 28, 2023	\$41.10 (per day)