



Order under Section 69 Residential Tenancies Act, 2006

Citation: Daniels Gateway Rental Communities v Cheang, 2023 ONLTB 22149

Date: 2023-03-03

File Number: LTB-L-039359-22

In the matter of: 1911, 2550 EGLINTON AVE W MISSISSAUGA
ON L5M0Y2

Between: Daniels Gateway Rental Communities Landlord

And

Robert Quinn and Shelly Cheang Tenant

Daniels Gateway Rental Communities (the 'Landlord') applied for an order to terminate the tenancy and evict Robert Quinn and Shelly Cheang (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 15, 2023.

The Landlord's Legal Representative Cathy Corsetti, the Landlord's Agent Genevieve Chessie and both of the Tenants attended the hearing.

Determinations:

1. The Landlord 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 \$2,225.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$73.15. This amount is calculated as follows: \$2,225.00 x 12, divided by 365 days.
5. The Tenant has paid \$2,100.00 to the Landlord since the application was filed.
6. The rent arrears owing to February 28, 2023 are \$19,528.14.

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 \$2,170.74 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. Interest on the rent deposit, in the amount of \$48.50 is owing to the Tenant for the period from September 18, 2020 to February 15, 2023.

Relief from eviction:

10. The Tenant Robert Quinn ('RQ') stated that he had entered into a previous payment with a prior Landlord but RQ was impacted from the COVID pandemic. RQ states that he expects to return to work in April. The Tenant Shelly Cheang ('SC') work part time and contributes \$700.00 per month for rent.
11. RQ stated that out of a 16 month period, he was worked 8 months in road work/construction and upon his return to employment, he expects to earn approximately \$5,000.00 per month.
12. SC stated that she took out a \$15,000.00 loan to pay for the apartment upon her moving in and submitted that she could try to get another loan to pay the rent arrears. The Tenants further submitted that they spent \$11,000.00 on travel to Sault St. Marie as RQ's grandmother was ill and they had to rent a car and stay at a hotel during her illness.
13. The Landlord's Legal Representative submits that they have not received full rent from the Tenants for quite some time and since filing the L1 application on July 14, 2022, the Tenants have only paid \$2,100.00 towards rent. It was also submitted that the Tenants have been in arrears previously and even though the Tenant RQ claims he was earning \$5,000.00 per month during that period of time, little, if any rent was paid to the Landlord.
14. The Landlord's Legal Representative submits that it is clear the Tenants are unable to pay rent arrears and new rent as it becomes due and seeks a standard order for eviction.
15. The Tenant state that they have a 9 year old child who attends school nearby and family is over one hour away.
16. Based on the evidence and submissions at the hearing, the Tenants have previously been and are now in substantial arrears with no real clear plan as to how they would be able to satisfy the arrears and pay new rent as it comes due. RQ's evidence was that he had withheld rent from the Landlord and acknowledged that those monies have since been spent. SC's evidence was that she took out a loan with a bank in the amount of \$15,000.00 in order to help pay for the rental unit as well and that perhaps she can borrow further monies. The Tenants have not paid full rent to the Landlord since at least July, 2022 when this application was filed. It would be unfair in all of the circumstances to impose on the Landlord's a further repayment plan or preserve the tenancy.

17. However, given all of the evidence, I am not satisfied that it would be unfair to the Landlord to give the Tenants some additional time to move but I am not prepared to delay eviction for months as the Tenants suggest. As the Tenants have a 9 year old child residing with them, I am prepared to delay eviction but given the quantum of arrears here, I am not prepared to grant a delay of more than 6 weeks. 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 8, 2023 pursuant to subsection 83(1)(b) of the Act.

18. This order contains all of the reasons in this matter and no further reasons will be issued.

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:**
 - \$21,939.14 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$24,164.14 if the payment is made on or before April 8, 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 8, 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 8, 2023.**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$16,367.15. 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 \$73.15 per day for the use of the unit starting February 16, 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 April 8, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 9, 2023 at 5.00% annually on the balance outstanding.

8. If the unit is not vacated on or before April 8, 2023, then starting April 9, 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 April 9, 2023.

March 3, 2023

Date Issued

Heather Chapple

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 9, 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 March 31, 2023

Rent Owing To March 31, 2023	\$23,853.14
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,100.00
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	\$21,939.14

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before April 8, 2023

Rent Owing To April 30, 2023	\$26,078.14
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,100.00
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	\$24,164.14

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

Rent Owing To Hearing Date	\$20,500.39
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,100.00
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	- \$2,170.74
Less the amount of the interest on the last month's rent deposit	- \$48.50

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	\$16,367.15
Plus daily compensation owing for each day of occupation starting February 16, 2023	\$73.15 (per day)