



Order under Section 69 Residential Tenancies Act, 2006

Citation: Sun v Brown, 2023 ONLTB 18155

Date: 2023-03-03

File Number: LTB-L-027000-22

In the matter of: 72, 2070 MEADOWGATE BLVD
LONDON ON N6M 0H5

Between: Yingzhi Sun Landlord

And

Shenyqua Brown Tenant

Yingzhi Sun (the 'Landlord') applied for an order to terminate the tenancy and evict Shenyqua Brown (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on January 16, 2023 at 4:30 p.m.

The Landlord's representative Timothy Mobberley, licensed paralegal and the Tenant Shenyqua Brown 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 \$2,500.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$82.19. This amount is calculated as follows: \$2,500.00 x 12, divided by 365 days.

Arrears Owing

5. The Landlord alleged the rent arrears owing to January 31, 2023 are \$21,700.00.
6. The Tenant disputed the total arrears owing asserting the arrears are \$19,200.00, submitting a copy of a signed cheque and bank statements which showed a payment of \$2,500.00 was made June 1, 2022.

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7. With no specific evidence presented by the Landlord's representative to the contrary, after weighing the evidence from both parties I am persuaded that rent arrears owing to January 31, 2023 are \$19,200.00.
8. The Landlord is entitled to \$140.00 to reimburse the Landlord for administration charges and bank fees the Landlord incurred as a result of 7 cheques given by or on behalf of the Tenant which were returned NSF. Copies of these cheques were submitted into evidence.
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 \$2,500.00 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.

Relief from Eviction

11. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant, 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.
12. The Tenant testified she has 2 school aged children under the age of 10 years old and it would be challenging to both complete a housing search and find a suitable unit at an affordable price for her young family near her kids' school.
13. The Tenant further testified she experienced health issues as a result of Covid-19 which resulted in her being unable to work since July 2022. The Tenant has since become a student and has enrolled in online courses.
14. The Tenant testified that currently her household income is \$2,400.00 per month from her child tax benefit and housing benefit. The Tenant explained she qualified for the Ontario Student Assistance Program (OSAP) and is expecting an OSAP cheque in February or March 2023 and could use a portion of that cheque to pay the arrears and proposed a payment plan of \$1,000.00 per month for 20 months. In the alternative, should she be evicted, the Tenant testified she needs between 3 and 6 months to find affordable housing.
15. The Landlord's representative testified the proposed repayment plan of approximately 2 years would be prejudicial to the Landlord given the significant amount of arrears outstanding and doubted the Tenant's ability to commit to a repayment plan given the Tenant testified her income sources are from OSAP and tax benefits and that the Tenant has ignored 7 attempts from the Landlord's agent to negotiate a repayment plan between May 3, 2022 and December 2, 2022.
16. I have reviewed the evidence weighing the evidence of both parties and considered all the circumstances and I am not persuaded the Tenant has a stable and significant enough income to commit to payment plan which would be dependant on using OSAP dollars intended for education towards paying rent arrears. However, I am persuaded that the Tenant has gone through very difficult circumstances with respect to both illness and loss

of employment and this will impact the Tenant's ability to find an appropriate affordable unit. I find that due to the family circumstances and the challenges involved in finding a new affordable unit, the eviction should be delayed until May 31, 2023.

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:**
 - \$24,526.00 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$27,026.00 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$29,526.00 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 \$15,741.07. 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 \$82.19 per day for the use of the unit starting January 17, 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 5.00% annually on the balance outstanding.
8. The Landlord 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 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.

March 3, 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 30, 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	\$24,200.00
Application Filing Fee	\$186.00
NSF Charges	\$140.00
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	\$24,526.00

B. 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	\$26,700.00
Application Filing Fee	\$186.00
NSF Charges	\$140.00
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	\$27,026.00

C. Amount the Tenant 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	\$29,200.00
Application Filing Fee	\$186.00
NSF Charges	\$140.00
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	\$29,526.00
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D. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$17,967.15
Application Filing Fee	\$186.00
NSF Charges	\$140.00
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	- \$2,500.00
Less the amount of the interest on the last month's rent deposit	- \$52.08
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	\$15,741.07
Plus daily compensation owing for each day of occupation starting January 17, 2023	\$82.19 (per day)