



Order under Section 69 Residential Tenancies Act, 2006

Citation: Fan v Mabee, 2023 ONLTB 22030

Date: 2023-02-28

File Number: LTB-L-039864-22

In the matter of: One Studio of Basement, 7 SNEATH AVE
SCARBOROUGH ON M1L2V1

Between: Yifang Fan Landlord

And

Alexander Derek Mabee Tenant

Yifang Fan (the 'Landlord') applied for an order to terminate the tenancy and evict Alexander Derek Mabee (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

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

Only the Landlord Yifang Fan and James Xu attended the hearing.

As of 2:03 p.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. Since the Tenant did not attend and the Landlord was prepared to proceed, the matter proceeded by way of an uncontested hearing pursuant to section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990.

Determinations:

1. At the hearing the Landlord relied on oral submissions and referred to documents to support their application.
2. 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.
3. As of the hearing date, the Tenant was still in possession of the rental unit.
4. The lawful rent is \$650.00. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$21.37. This amount is calculated as follows: \$650.00 x 12, divided by 365 days.
6. The Tenant has not made any payments since the application was filed.
7. The rent arrears owing to February 28, 2023 are \$5,850.00.

8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$650.00 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.
10. Interest on the rent deposit, in the amount of \$13.99 is owing to the Tenant for the period from September 30, 2021 to February 15, 2023.
11. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including whether the Landlord attempted to negotiate a payment agreement with the Tenant. The Landlord submitted they attempted to discuss a payment agreement with the Tenant but they refused to speak to the Landlord. I asked the Landlord if they were aware of any circumstances the Tenant may be experiencing that would make eviction unfair and they were aware of none. I find it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

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:**
 - \$6,036.00 if the payment is made on or before February 28, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$6,686.00 if the payment is made on or before March 11, 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 March 11, 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 March 11, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$5,042.56. 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 \$21.37 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 March 11, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 12, 2023 at 5.00% annually on the balance outstanding.
8. If the unit is not vacated on or before March 11, 2023, then starting March 12, 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 March 12, 2023.

February 28, 2023
Date Issued

John Cashmore
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 September 12, 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 February 28, 2023

Rent Owing To February 28, 2023	\$5,850.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$6,036.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before March 11, 2023

Rent Owing To March 31, 2023	\$6,500.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$6,686.00

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

Rent Owing To Hearing Date	\$5,520.55
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$650.00
Less the amount of the interest on the last month's rent deposit	- \$13.99
Total amount owing to the Landlord	\$5,042.56
Plus daily compensation owing for each day of occupation starting February 16, 2023	\$21.37 (per day)