



Order under Section 69 Residential Tenancies Act, 2006

Citation: Coal Harbour Properties Limited Partnership v Balasubramaniam, 2023 ONLTB 21323

Date: 2023-02-27

File Number: LTB-L-030411-22

In the matter of: 0706, 350 QUEENS QUAY W
TORONTO ON M5V3A7

Between: Coal Harbour Properties Limited Partnership Landlord

And

Rukshian Balasubramaniam Tenant

Coal Harbour Properties Limited Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Rukshian Balasubramaniam (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 19, 2023.

The Landlord's Legal Representative, Cathy Corsetti, and the Tenant attended the hearing. The Tenant spoke to Tenant Duty Counsel prior to 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 \$2,435.88. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$80.08. This amount is calculated as follows: $\$2,435.88 \times 12$, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to January 31, 2023 are \$21,894.04.
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 \$2,407.00 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.

9. Interest on the rent deposit, in the amount of \$91.37 is owing to the Tenant for the period from January 6, 2021 to January 19, 2023.

Tenant's evidence

10. The Tenant stated that he did not dispute the amount of arrears owed to the Landlord and proposed a payment plan. He stated he was audited in May 2022 by the Canada Revenue Agency ('CRA') and he will receive the refund in the amount of \$42,765.00 on May 15, 2022. He then stated a decision with respect to the outcome of the audit should be received by May 15, 2023. Despite potentially receiving these funds, the Tenant proposed the following payment plan:

Payment Date	Amount
April 15, 2023	\$5,000.00
June 15, 2023	\$5,000.00
September 15, 2023	\$5,000.00
December 15, 2023	\$7,080.04

11. The Tenant stated when he receives the expected refund from CRA, it is his intention to pay the Landlord the full amount owing however, as he is unaware of the exact date the refund will be issued, his proposal shows his good faith to pay the rent arrears owing. He stated he will be borrowing the funds from friends thus why there is three months between payments. He added he will also be paying the lawful monthly rent in full and on time each month commencing February 1, 2023.
12. The Tenant stated he is currently employed part-time and his monthly income is approximately \$5,100.00. His expenses, including the rent, are approximately \$3,235.00 thus he believes he has the financial means to meet his obligations to the Landlord.
13. In the alternative, the Tenant seeks a delay in eviction of 60 to 90 days so he can make alternative living arrangements.

Landlord's evidence

14. The Landlord's Legal Representative submitted the Tenant has not paid any rent April 2022 despite being provided with written correspondence in July 2022 and October 2022 from the Landlord offering a payment plan. She submitted the Tenant did not respond to the Landlord at any time and the Landlord was unaware of the Tenant's financial position.
15. She submitted the Landlord is seeking an 11-day standard order as the arrears are over \$22,000.00, the Tenant has paid no rent. She stated the Tenant's proposed payment plan is highly prejudicial to the Landlord as the Tenant will be relying on his friends to lend him the money. She stated there is no evidence from the Tenant to support his claims of a refund from CRA and any further delay of termination of the tenancy will possibly result in further rent arrears.

Analysis

16. Without positive evidence, the Tenant's claim of a CRA tax refund is difficult to establish. Thus, in order for the Tenant's request for a payment plan to be successful, he must provide some documentary evidence to support his claim that a refund is forthcoming.
17. At paragraph 26 of *F.H. v. McDougall*, 2008 SCC 53 (CanLII), the court found that the civil standard of proof requires that evidence "must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test." Here I find the Tenant has not met the required standard. In fact, the Tenant's evidence was vague and inconsistent.
18. Thus, I find that, on a balance of probabilities, it is more likely than not that the Tenant's CRA refund is not forthcoming on the expected date as a decision is yet to be made with respect to the audit.
19. With respect to the request for relief sought by the Tenant, repayment plans are granted to allow a tenant to catch up on the arrears while continuing to pay their monthly rent. Here, the Tenant's own evidence suggests that a repayment plan would seem to be unrealistic and put him in further financial distress. I say this because the Tenant stated he will be borrowing the money from friends on a quarterly basis and although his monthly income supports paying the monthly rent, it does support quarterly payments of \$5,000.00 each. As such, I am not persuaded that the Tenant will be able to pay his rent plus the additional quarterly amount in accordance with his proposed payment plan.
20. Therefore, I find that awarding a repayment plan under the circumstances would be unfair. I can however consider whether to postpone the eviction pursuant to subsection 83(1)(b) of the *Residential Tenancies Act, 2006* (the 'Act').
21. Given the length of the tenancy and the amount of arrears owing as well as the fact that the Tenant has made no payments to the Landlord for the rent since April 2022, I do not find that further relief is warranted.
22. I have considered all of the disclosed circumstances in accordance with subsection 83 of the Act, including whether the Landlord attempted to negotiate a repayment plan with the Tenant, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
23. Since the hearing date, the rent for the periods of February 1, 2023 to February 28, 2023 and March 1, 2023 to March 31, 2023 have also come due. An order shall issue accordingly.
24. This order contains all of the reasons for my decision within it. No further reasons shall 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:**

- \$24,515.92 if the payment is made on or before February 28, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$26,951.80 if the payment is made on or before March 10, 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 10, 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 10, 2023**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$18,667.31. 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 \$80.08 per day for the use of the unit starting January 20, 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 10, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 11, 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 March 10, 2023, then starting March 11, 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 March 11, 2023.

February 27, 2023

Date Issued

Susan Priest

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 11, 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 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	\$24,329.92
Application Filing Fee	\$186.00
NSF Charges	\$0.00
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
Total the Tenant must pay to continue the tenancy	\$24,515.92

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before March 10, 2023

Rent Owing to March 31, 2023	\$26,765.80
Application Filing Fee	\$186.00
NSF Charges	\$0.00
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
Total the Tenant must pay to continue the tenancy	\$26,951.80

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

Rent Owing To Hearing Date	\$20,979.68
Application Filing Fee	\$186.00
NSF Charges	\$0.00
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	- \$2,407.00
Less the amount of the interest on the last month's rent deposit	- \$91.37
Total amount owing to the Landlord	\$18,667.31
Plus daily compensation owing for each day of occupation starting January 20, 2023	\$80.08 (per day)