



Order under Section 69 Residential Tenancies Act, 2006

Citation: Heydari v Anda, 2023 ONLTB 19156

Date: 2023-02-24

File Number: LTB-L-051700-22

In the matter of: 79 BRECKONWOOD CRES Markham
ON L3T5G8

Between: Latif Heydari and Manijeh Khataiazar Landlords

And

Christine Anda and Johny Hormis Johna Tenants

Latif Heydari and Manijeh Khataiazar (the 'Landlords') applied for an order to terminate the tenancy and evict Christine Anda and Johny Hormis Johna (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on February 1, 2023.

The Landlord's Legal Representative, Reyhaneh Lajevardi, and one of the Tenants, Christine Anda(CA), attended the hearing. A. Heydari (AH) attended the hearing on behalf of the Landlords.

CA declined to speak with Tenant Duty Counsel prior to the hearing.

Preliminary issues:

Adjournment request

1. CA requested an adjournment as her legal representative was not available to participate in the hearing. CA testified that she had received the Notice of Hearing in December, but had not contacted her "family lawyer" until sometime in January. There was no authorization for representation in the Board's files, and the Tenants' chosen representative did not send a representative to request an adjournment on his behalf. CA

confirmed that the Tenants had not retained representation on this matter. CA again declined to speak to Tenant Duty Counsel.

2. The Landlord's Legal Representative argued that the Tenants had been aware of the proceedings for more than a month, and had been aware that the Landlords had filed a previous application with respect to the tenancy. The previous L1 application had been filed on May 3, 2022, and was scheduled to be heard on January 5, 2023, but had been withdrawn by the Landlords due to an error on the previous N4. The arrears claimed in the application are above the Board's monetary jurisdictional limit, and a delay in the proceedings would be prejudicial to the Landlords.
3. I denied the request to adjourn, as the Tenants had ample time to seek legal representation, and again asked CA if she wished to speak to Tenant Duty Counsel. CA declined to speak to Tenant Duty Counsel for a 3rd time.

Rental Period

4. CA claimed that the N4 notice was invalid because the rental period set out in the N4 Notice was not the same as the rental period in the Lease. The Lease set out that the rent was due on the 1st of the month, but the rental period set out in the N4 was from the 5th of the month to the 4th of the month. CA testified that the Landlords had been cashing their cheques on the 5th of the month, but she did not know why.
5. AH, is the Landlords' son. He testified that in the first month of the tenancy, the Tenants had requested to pay their rent on the 5th of the month, the Landlords agreed, and the Tenants gave the Landlords post-dated cheques which were dated for the 5th of the month.
6. As the Tenants had paid their rent on the 5th of the month, from the outset of the Tenancy, I am satisfied that the rental period is from the 5th of the month to the 4th of the following month, and therefore the N4 Notice is valid.
7. The hearing proceeded on its merits.

Determinations:

1. The Landlords served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenants 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 Tenants were still in possession of the rental unit.
3. The lawful rent is \$3,500.00. It is due on the 5th day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$115.07. This amount is calculated as follows: \$3,500.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to February 4, 2023 are \$42,000.00.
7. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord agrees to waive any amount of the Board's jurisdiction pursuant to section 207 of the Act, specifically, any amount above \$35,186.00 (\$35,000.00 plus the \$186.00 application filing fee).
9. The Landlords collected a rent deposit of \$3,500.00 from the Tenants 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.
10. Interest on the rent deposit, in the amount of \$63.34 is owing to the Tenants for the period from November 5, 2020 to February 1, 2023.
11. CA testified that the Tenants had attempted to pay the Landlords. The Tenants asked the Landlords not to cash the rent cheques for February 2022, March 2022 and April 2022. The Tenants understood that they had until the end of April, 2022 to pay the rent, because the termination date in the original N4 Notice was at the end of the month, so the Tenants did not have the funds in the account when the Landlords cashed all three cheques on April 12, 2022, without warning the Tenants. After the Landlords cashed the cheques, the Tenants no longer trusted the Landlords, so they did not pay any further rent.
12. AH testified that after the Tenants had asked the Landlords not to cash the cheques for three consecutive months, he was concerned, and cashed the cheques, which were returned NSF. The Tenants cheques for May, June and July were also returned NSF. The August 5, 2022 cheque was returned as the account had been closed.
13. The Landlords were seeking an order for eviction.

Relief from eviction

14. 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 Landlords attempted to negotiate a repayment agreement with the Tenants. The Tenants have a child under the age of ten. CA testified that they have a business that was impacted by Covid, and the 2022 trucker convoy, and that they have been struggling financially. The Landlords are elderly, and rely on the rent to pay the mortgage on the unit. They are currently relying on their children for financial support and living in their son's basement.
15. The Tenants have not paid any rent in over a year, and have not made any efforts to preserve their tenancy, by paying partial rent or attempting to negotiate a payment plan

with the Landlords. I considered the presence of a young child in the unit, as well as the impact of the arrears on the Landlords, and that the arrears are already in excess of the Board's monetary jurisdiction, and find that 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 Landlords and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlords or to the LTB in trust:**
 - \$45,686.00 if the payment is made on or before March 4, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$49,186.00 if the payment is made on or before March 7, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the order if they pay the amount required under that subsection on or after March 7, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
 4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before March 7, 2023**
 5. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$35,186.00. This amount includes rent arrears owing to the date of the hearing up to the Board's jurisdictional limit 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 Tenants. See Schedule 1 for the calculation of the amount owing.
 6. If the Tenants do not pay the Landlords the full amount owing on or before March 7, 2023, the Tenants will start to owe interest. This will be simple interest calculated from March 8, 2023 at 5.00% annually on the balance outstanding.
 7. The Landlords or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
 8. If the unit is not vacated on or before March 7, 2023, then starting March 8, 2023, the Landlords 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 Landlords on or after March 8, 2023.

February 24, 2023

Date Issued

 Kathleen Wells
 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 8, 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before March 4, 2023

Rent Owing To March 4, 2023	\$45,500.00
Application Filing Fee	\$186.00
Total the Tenants must pay to continue the tenancy	\$45,686.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before March 7, 2023

Rent Owing To April 4, 2023	\$49,000.00
Application Filing Fee	\$186.00
Total the Tenants must pay to continue the tenancy	\$49,186.00

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

Rent Owing To Hearing Date	\$41,721.96
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$3,500.00
Less the amount of the interest on the last month's rent deposit	- \$63.34
Less the amount the Landlord waived over the Board's monetary jurisdiction	- \$3,158.62
Total amount owing to the Landlords: This amount is the Board's monetary jurisdiction plus the filing fee	\$35,186.00