



Order under Section 69 Residential Tenancies Act, 2006

Citation: Tahir v Miller, 2023 ONLTB 19165

Date: 2023-02-10

File Number: LTB-L-033490-22

In the matter of: UPPER LEVEL, 279 SHERIDAN ST
Brantford ON N3S4R5

Between: Abdul Aala Khan Tahir Landlord

And

Lashawntay Ryan Miller Tenant

Abdul Aala Khan Tahir (the 'Landlord') applied for an order to terminate the tenancy and evict Lashawntay Ryan Miller (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 2, 2023. Only the Landlord's legal representative, Sudhir Rana, attended the hearing. As of 10:09am, the Tenant was not present or represented at the hearing although properly served with notice of the hearing by the Board.

The Tenant signed in for the hearing at 10:37am after the matter had already been completed. When asked why the Tenant did not attend on time, they indicated that their phone died and that they were not home at the time and needed to find a charger.

Since the Tenant was not present when the matter was called, the hearing proceeded with only the Landlord's uncontested evidence.

The application is amended to include that the Landlord did collect a last month's rent deposit.

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 \$2,000.00. It is due on the 9th day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$65.75. This amount is calculated as follows: \$2,000.00 x 12, divided by 365 days.
5. The Landlord is holding a last month's rent deposit that exceeds the current monthly rent, which is not permitted by the *Residential Tenancies Act, 2006* (the 'Act'). The Tenant shall be credited with \$500.00, which is the difference between the amount currently held and the permissible amount. The credit is reflected as a payment on the schedule. The rent deposit now equals the current monthly rent.
6. The rent arrears owing to February 8, 2023 are therefore \$22,500.00.
7. The Landlord collected a rent deposit of \$2,000.00. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
8. Interest on the rent deposit, in the amount of \$66.78 is owing to the Tenant for the period from January 9, 2022 to February 2, 2023.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. The Landlord has attempted to contact the Tenant by phone, but the number no longer works and the Landlord feels as though they have been blocked from calling by the Tenant. The Landlord attempted to email the Tenant, but they received no response.
11. The rent arrears have continued to accumulate with no payments from the Tenant to reduce them. The Tenant owes close to a year's worth of rent.
12. The Tenant was not in attendance at the hearing to make me aware of any circumstances to consider additional relief.
13. 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 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:**
 - \$24,686.00 if the payment is made on or before February 21, 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 February 21, 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 February 21, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$20,262.97. 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 \$65.75 per day for the use of the unit starting February 3, 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 February 21, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 22, 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 February 21, 2023, then starting February 22, 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 February 22, 2023.

2023 ONLTB 19165 (CanLII)

February 10, 2023

Date Issued

Terri van Huisstede
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 August 22, 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 21, 2023

| | |
|-----------------------------|-------------|
| Rent Owing To March 8, 2023 | \$25,000.00 |
|-----------------------------|-------------|

| | |
|--|--------------------|
| 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 the Landlord owes the Tenant for an{abatement/rebate} | - \$0.00 |
| Less the amount of the credit that the Tenant is entitled to | - \$500.00 |
| Total the Tenant must pay to continue the tenancy | \$24,686.00 |

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

| | |
|--|----------------------|
| Rent Owing To Hearing Date | \$22,643.75 |
| 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 | - \$2,000.00 |
| Less the amount of the interest on the last month's rent deposit | - \$66.78 |
| 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 | - \$500.00 |
| Total amount owing to the Landlord | \$20,262.97 |
| Plus daily compensation owing for each day of occupation starting February 3, 2023 | \$65.75 (per day) |