



Order under Section 69 Residential Tenancies Act, 2006

Citation: Chang v Shaffer, 2023 ONLTB 19139

Date: 2023-02-08

File Number: LTB-L-026996-22

In the matter of: 1947 Dalhousie Cres
Oshawa ON L1G8C3

Between: Augustus Chang Landlord

And

Amanda Thompson, Gavyn Blondin and Jose Shaffer Tenants

Augustus Chang (the 'Landlord') applied for an order to terminate the tenancy and evict Amanda Thompson, Gavyn Blondin and Jose Shaffer (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. (L1 application)

This L1 application was heard by videoconference on February 1, 2023.

Only the Landlord attended the hearing.

As of 2:00 pm, the Tenants were 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. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment 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 L1 application was filed.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The monthly rent is \$3,000.00. It is due on the 1st day of each month.
4. Based on the monthly rent, the daily rent/compensation is \$98.63. This amount is calculated as follows: \$3,000.00 x 12, divided by 365 days.
5. Since the L1 application was filed, the Tenants made no payments to the Landlord other than a "credited payment" of \$3,000.00 to the Landlord. The Landlord explained how the "credited payment" was made – that is, the last month's rent deposit of \$3,000.00 had been used for August 2022 rent, and as a result the Tenants were credited with a \$3,000.00 payment toward their arrears. To be clear, there is no longer any rent deposit being held for this tenancy.

6. The rent arrears owing to February 28, 2023 are \$39,000.00. The Landlord's claim under this L1 application exceeds the Board's monetary jurisdiction of \$35,000.00. The Landlord indicated a desire to proceed with the hearing of the application and voluntarily waived the portion of the claim that exceeds the Board's monetary jurisdiction.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord testified concerning the number of times he had contacted the Tenants, trying to solicit rent payments in any way or payment scheme possible. After March 2022 approximately, the Landlord stated the Tenants basically started to ignore him whenever he tried to solicit rent payments.
9. 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:**
 - **\$35,000.00** if the payment is made on or before February 19, 2023. See Schedule 1A for the calculation of the actual amount owing, which is more than \$35,000.00 (exceeds the monetary jurisdiction of the LTB).
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 full amount owing as ordered after February 19, 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 February 19, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$35,000.00. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1B for the calculation of the actual amount owing, which is more than \$35,000.00 (exceeds the monetary jurisdiction of the LTB).
6. The Tenants would also normally be ordered to pay to the Landlord \$98.63 per day for compensation for the use of the unit starting February 2, 2023 to the date the Tenants move out of the unit. Having exceeded the Board's monetary jurisdiction of \$35,000.00, this amount of daily compensation will therefore not be awarded.
7. The Tenants would have normally been ordered to pay the Landlord \$186.00 for the cost of filing the application. Having exceeded the Board's monetary jurisdiction of \$35,000.00, the cost of filing the application will therefore not be awarded.

8. If the Tenants do not pay the Landlord the full amount owing on or before February 19, 2023, the Tenants will start to owe interest. This will be simple interest calculated from February 20, 2023 at 5.00% annually on the balance outstanding.
9. The Landlords or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
10. If the unit is not vacated on or before February 19, 2023, then starting February 20, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
11. 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 20, 2023.

February 8, 2023
Date Issued

Alex Brkic
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 20, 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 19, 2023

Rent Owing To February 28, 2023	\$42,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$3,000.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Total the Tenants owe (sum of the above)	\$39,186.00
Board monetary jurisdiction – maximum amount the LTB can order	\$35,000.00
Total the Tenants must pay to continue the tenancy	\$35,000.00

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

Rent Owing To Hearing Date (Feb 1/2023 hearing – Tenants have until midnight Feb 1/23 to pay rent, therefore the amount owing at the time of hearing goes to January 31, 2023)	\$39,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,000.00
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	- \$0.00
Total the Tenants owe (sum of the above)	\$36,186.00
Board monetary jurisdiction – maximum amount the LTB can order	\$35,000.00
Total amount owing to the Landlord	\$35,000.00
Daily compensation that would be owing for each day of occupation starting February 2, 2023, but due to the LTB's monetary jurisdiction cannot be ordered	\$98.63 (per day)