



Order under Section 69 Residential Tenancies Act, 2006

Citation: Rosslyn Residences v Aksu, 2023 ONLTB 14753

Date: 2023-01-09

File Number: LTB-L-025532-22

In the matter of: 906, 5950 BATHURST ST
NORTH YORK ON M2R1Y9

Between: Rosslyn Residences Landlord

And

Nursel Aksu Tenant

Rosslyn Residences (the 'Landlord') applied for an order to terminate the tenancy and evict Nursel Aksu (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on January 5, 2023. The Landlord's legal representative, Charlie Bobrowsky, attended the hearing. As of 2:33pm the Tenant was not present or represented although properly served with notice of this hearing by the LTB.

Filiz Cakmak, a purported friend of the Tenant, attended the hearing on behalf of the Tenant to request an adjournment on the basis that the Tenant could not attend because they had to go to emerge because of their son's epileptic seizure, but they could not produce any supporting documentation regarding their authorization. The matter was stood down for 45 minutes to give Ms. Cakmak and the Tenant an opportunity to attend or to produce a written authorization and they did not do so. As a result, the hearing proceeded with only the Landlord's evidence.

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 \$1,373.30. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$45.15. This amount is calculated as follows: \$1,373.30 x 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 \$13,394.94.
7. The NSF charges claimed by the Landlord related to electronic fund transfers rather than NSF cheques. Since subsection 87(5) of the *Residential Tenancies Act, 2006*, does not provide a remedy for electronic fund transfers that fail due to non-sufficient funds, the Landlord's claim for NSF charges is denied. The Landlord also failed to produce evidence to support the bank charges claimed for the NSF charges.
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 \$1,339.80 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 \$0.46 is owing to the Tenant for the period from January 1, 2023 to January 5, 2023.
11. Since the Tenant did not attend the hearing or provide adequate authorization to someone appearing for them, I am unable to consider the Tenants circumstances on whether a payment plan or a delay would be appropriate under all of the circumstances.
12. Based on the Landlords undisputed evidence I find that the Landlord has tried working with the Tenant regarding making payment plans for the arrears by the Landlord leaving several messages and providing written correspondence to the Tenant which invited the Tenant to reach out to the Landlord or their legal representative and the Tenant has not responded to the correspondence. The Tenant also has not paid any rent since April of 2022 and the rent arrears continue to accrue monthly.
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:**
 - \$13,655.94 if the payment is made on or before January 20, 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 January 20, 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 January 20, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$11,168.13. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. 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 \$45.15 per day for the use of the unit starting January 6, 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 January 20, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 21, 2023 at 2.00% 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 January 20, 2023, then starting January 21, 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 January 21, 2023.

January 9, 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 July 21, 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 January 20, 2023

Rent Owing To January 31, 2023	\$13,394.94
Application Filing Fee	\$186.00
NSF Charges	\$75.00
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	- \$0.00
Total the Tenant must pay to continue the tenancy	\$13,655.94

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

Rent Owing To Hearing Date	\$12,247.39
Application Filing Fee	\$186.00
NSF Charges	\$75.00
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	- \$1,339.80
Less the amount of the interest on the last month's rent deposit	- \$0.46
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	- \$0.00
Total amount owing to the Landlord	\$11,168.13
Plus daily compensation owing for each day of occupation starting January 6, 2023	\$45.15 (per day)