



Order under Section 69 Residential Tenancies Act, 2006

Citation: Siddoji v Sabun, 2022 ONLTB 14392

Date: 2022-12-19

File Number: LTB-L-027362-22

In the matter of: Building G, Unit 107, 275 LARCH ST
WATERLOO ON N2L0J4

Between: Rajesh Siddoji and Vijaya Siddoji Landlord

And

Faisal Addison Sabun and Tenants
Hassan A Abdul Rahman

Rajesh Siddoji and Vijaya Siddoji (the 'Landlord') applied for an order to terminate the tenancy and evict Faisal Addison Sabun and Hassan A Abdul Rahman (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

The Landlords also applied for an order to terminate the tenancy and evict the Tenants because:

- the Tenants have been persistently late in paying the Tenants' rent.

The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on December 13, 2022.

The Landlord Rejesh Siddoji and the Tenant Faisal Addison Sabun attended the hearing. Prior to the hearing, the Tenant spoke with Tenant Duty Counsel.

Determinations:

L1 Application:

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 application was filed.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$1,710.00. It is due on the 1st day of each month.
4. Based on the monthly rent, the daily rent/compensation is \$56.22. This amount is calculated as follows: \$1,710.00 x 12, divided by 365 days.

5. The Tenant, Faisal Addison Sabun ('FS') disputed the rent arrears alleged and testified that he had paid \$750.00 cash to the Landlord on either March 1 or 2, 2021. FS submitted that he attended the rental unit in March, 2021 and gave \$20 and \$50 bills to a woman with dark hair, no glasses. FS stated that he did not receive a receipt or the name of the person he provided the cash to. FS thought he would pay cash to the Landlord instead of the normal pre-authorized payments he had done previously.
6. Including, the cash payment alleged to have been paid in March, 2021, FS testified that he paid the following rent to the Landlord:

Date:	Amount:
April 1, 2021	\$1,250.00
August 1, 2021	\$1,250.00
February 1, 2022	\$900.00 by debit card
April 1, 2022	\$1,740.00 by his mother's VISA debit card

7. FS testified that the Landlord/leasing office staff advised they would apply the last month's rent deposit for the month of August, 2022 as he was in rent arrears.
8. FS did acknowledge that no rent had been paid to the Landlord for 9 months in 2021 and for 9 months in 2022.
9. The Landlord's witness Silvia Gutierrez ('SG') testified that she is in charge of rent payments and collections with the leasing office. She submitted that if any cash payments are received, a receipt is always immediately issued. SG stated that the office does not have the capability to accept debit payments. SG testified that no payments have been received from the Tenants and particularized that no cash or payments have been posted to the Tenants account.
10. SG testified that the lease agreement is a joint tenancy with Faisal Addison Sabun and Hassan A Abdul Rahman as tenants.
11. I do not find FS's testimony that he made some cash payments to be credible. FS testified that he and his mother made two debit payments however, the Landlord testified that they do not have the capability to receive debit payments and have denied receiving any payments from the Tenants. FS was unable to support his position that he paid cash to the Landlord as he did not produce any receipts or statements from his bank to show the cash withdrawals. Normally, the person who has given a cash payment receives a receipt and I am satisfied that the Landlord would have provided a receipt if a cash payment had been received. In this case, no receipt was provided. The lack of bank statements and having his mother testify to support FS's position further diminishes FS's credibility. I am therefore not satisfied that any cash payments were made by the Tenants to the Landlord and find that the Tenants have also not made any payments since the application was filed.
12. The rent arrears therefore owing to December 31, 2022 are \$39,640.00.

13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. The Landlord collected a rent deposit of \$1,710.00 from the Tenants 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.
15. Interest on the rent deposit, in the amount of \$62.30 is owing to the Tenants for the period from October 1, 2019 to December 13, 2022.

Relief from eviction:

16. The Landlord seeks an expedited order for eviction. The Landlord's Legal Representative stated that the rent arrears are substantial, that no payments have been made by the Tenants for a long period of time and that the Tenants have not made any efforts to enter into a payment plan or enter into any negotiations with the Landlord.
17. The Landlord's Legal Representative said that although the arrears exceed the monetary jurisdiction of the Board, the Landlord waives the excess, and requests an order for the maximum permitted under the Board's jurisdiction.
18. FS submits that he is willing to make amends and wants to preserve the tenancy. FS stated that he understands the issues, wishes to take responsibility and is trying to be a better member of society.
19. The Tenants have not paid the total rent the Tenants were required to pay for a substantial period of time and have made no efforts to enter into a payment plan. FS submitted that he would need one month's notice to find accommodation if eviction was granted. FS stated that he is a young student, working full-time and receives \$2,000.00 per month after taxes and deductions. It was noted that rent is \$1,710.00 per month and perhaps FS cannot afford the rental unit. FS stated that his mother pays his cellphone and gives him \$300.00 per month for food. FS also submitted that he is on the brink of a record deal which would bring him an income of "six figures" but it is not expected for this to come to fruition until spring, 2023. FS did testify that his mother lives in Guelph but she has a full house already so he does not believe he can move in with her.
20. Given the above, I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until January 6, 2023 pursuant to subsection 83(1)(b) of the Act.

L2 Application

21. The Landlord's Legal Representative requested that the L2 application be withdrawn. An order will issue accordingly.

It is ordered that:

1. The tenancy between the Landlord 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 Landlord or to the LTB in trust:

- \$39,826.00 if the payment is made on or before December 31, 2022. See Schedule 1 for the calculation of the amount owing.

OR

- \$41,536.00 if the payment is made on or before January 6, 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 full amount owing as ordered plus any additional rent that became due after January 6, 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 January 6, 2023.**
 5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$37,074.56. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
 6. The Tenants shall also pay the Landlord compensation of \$56.22 per day for the use of the unit starting December 14, 2022 until the date the Tenants move out of the unit.
 7. The total amount to be paid by the Tenants is capped at the Board's monetary jurisdiction of \$35,000.00.
 8. If the Tenants do not pay the Landlord the full amount owing on or before December 30, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 31, 2022 at 4.00% annually on the balance outstanding.
 9. If the unit is not vacated on or before January 6, 2023, then starting January 7, 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 7, 2023.
 11. The Landlord's L2 application is dismissed.

December 19, 2022

Date Issued

Heather Chapple

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 7, 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 December 31, 2022

Rent Owing To December 31, 2022	\$39,640.00
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	- \$0.00
Total the Tenant must pay to continue the tenancy	\$39,826.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before January 6, 2023

Rent Owing To January 31, 2023	\$41,350.00
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	- \$0.00
Total the Tenant must pay to continue the tenancy	\$41,536.00

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

Rent Owing To Hearing Date	\$38,660.86
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	- \$1,710.00
Less the amount of the interest on the last month's rent deposit	- \$62.30
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	\$37,074.56
Plus daily compensation owing for each day of occupation starting December 14, 2022	\$56.22 (per day)