



Order under Section 69 Residential Tenancies Act, 2006

Citation: Samadi v Roberts, 2022 ONLTB 14185

Date: 2022-12-19

File Number: LTB-L-002562-21-RV2

In the matter of: 36, 1965 ALTONA RD
PICKERING ON L1V1M8

Between: Shahla Popalzay Landlords
Sultana Samadi

And

Christian Roberts Tenant

Review Order

Shahla Popalzay and Sultana Samadi (the 'Landlords') applied for an order to terminate the tenancy and evict Christian Roberts (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard on July 5, 2022 and resolved by order LTB-L-002562-21 issued on July 18, 2022. The order dismissed the Landlord's application as abandoned.

On August 8, 2022, the Landlords requested a review of the order and that the order be stayed until the request to review the order was resolved. The Landlords alleged that they were not reasonably able to participate in the proceeding.

On August 10, 2022, interim order LTB-L-002562-21-RV-IN was issued, staying the order issued on July 18, 2022.

The Landlord's request to review was heard on September 26, 2022. Only the Landlords and their legal representative Caryma Sa'd attended the hearing. The matter was resolved by order LTB-L-002562-21-RV issued on October 11, 2022.

On November 2, 2022, the Tenant requested a review of the order issued on October 11, 2022 and that the order be stayed until the request to review the order is resolved. The Tenant's request alleges that the Tenant was not reasonably able to participate in the hearing held on September 26, 2022.

On November 3, 2022, interim order LTB-L-002562-21-RV2-IN was issued, staying the order issued on October 11, 2022.

This second request for review was heard by way of videoconference on December 5, 2022. The Landlords, the Landlord's legal representative Caryma Sa'd and the Tenant attended the hearing.

Determinations:

Review request:

1. The Landlords consented to the Tenant's request for review. As such, the matter was heard de novo (anew).

L1 application:

2. The Landlords 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.
3. As of the hearing date, the Tenant was still in possession of the rental unit.
4. The lawful rent is \$2,000.00. It is due on the 1st day of each month.
5. 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.
6. The Tenant has paid \$2,000.00 to the Landlords since the application was filed.
7. The rent arrears owing to December 31, 2022 are \$34,977.23.
8. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlords collected a rent deposit of \$2,000.00 from the Tenant 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 deposit is owing from November 16, 2017.
11. The arrears of rent claimed exceed the Board's monetary jurisdiction of \$35,000.00. The Landlord's legal representative understood that in accordance with section 207(3) of the *Residential Tenancies Act, 2006* (Act), by pursuing this application before the Board, the Landlords cannot claim any arrears in excess of \$35,000.00 in a new application or before a Court of competent jurisdiction.
12. While the Board cannot order a person to pay more than \$35,000.00, I find that this does not apply to "stay and pay" option set out in paragraph 3 below, as the Tenant is not required to pay that amount. The Tenant has the option of paying the amount in paragraph 3 if they wish to continue tenancy.

13. The Tenant disputed the amount of arrears claimed by the Landlords. The Tenant stated that she paid to the Landlords \$2,000.00 by way of E-transfer on February 1, 2022. The Tenant did not submit any receipt of payment, bank records or confirmation from the Landlord that the funds were received. The Landlords deny that any funds were received.
14. In *Mauti v. Gibbs, 2019 ONSC 3355 (CanLII)*, the Divisional Court held at paragraph 27 that while the Landlord bears the burden of proof in a rent arrears application, it is difficult for a landlord to prove a negative (i.e. non-payment of rent). Therefore, “. . .while the ultimate persuasive burden never shifts, once a landlord denies receiving funds, the tenant will have an evidentiary burden or a chance to advance some evidence to positively prove that he or she paid rent.”
15. On a balance of probabilities, I find that the Tenant owes to the Landlords rent for the month of February 2022. As stated, the Tenant provided no proof of payment being made or received by the Landlord.

Relief from eviction:

16. 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 not be unfair to postpone the eviction until January 3, 2023 pursuant to subsection 83(1)(b) of the Act.
17. The arrears of rent are substantial and exceed the Board's monetary jurisdiction. Based on the Tenant's income, monthly rent and living expenses, the Tenant is not able to propose a repayment plan to the Landlord, while paying the monthly rent on an ongoing basis.
18. Although the Tenant testified that she is in the process of obtaining a second and part-time job, I find it would be unfair to the Landlords to delay any further and wait until the Tenant is able to propose a reasonable repayment plan. The Landlords are a non-corporate entity who rely on the rental income to pay the mortgage and taxes on the rental property.
19. I am however mindful to the fact that we are approaching the holiday season and as such, find it would not be unfair to delay eviction to January 3, 2022.

It is ordered that:

1. The request to review order LTB-L-002562-21-RV issued on October 11, 2022, is granted. The order is cancelled and replaced with this order.
2. The tenancy between the Landlords and the Tenant is terminated unless the Tenant voids this order.
3. **The Tenant may void this order and continue the tenancy by paying to the Landlords or to the LTB in trust:**

- \$35,163.23 if the payment is made on or before December 31, 2022. See Schedule 1 for the calculation of the amount owing.

OR

- \$37,163.23 if the payment is made on or before January 3, 2023. See Schedule 1 for the calculation of the amount owing.
4. 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 3, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
 5. **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 3, 2023**
 6. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$32,665.66. 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 Landlords owe on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
 7. The Tenant shall also pay the Landlords compensation of \$65.75 per day for the use of the unit starting until the date the Tenant moves out of the unit.
 8. If the Tenant does not pay the Landlords 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 3, 2023, then starting January 4, 2023, the Landlords 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 Landlords on or after January 4, 2023.

2022 ONLTB 14185 (CanLI)

December 19, 2022
Date Issued

Fabio Quattrociochi
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 4, 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 December 31, 2022

Rent Owing To December 31, 2022	\$36,977.23
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords since the application was filed	- \$2,000.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlords owe 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	\$35,163.23

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before January 3, 2023

Rent Owing To January 31, 2023	\$38,977.23
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords since the application was filed	- \$2,000.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlords owe 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	\$37,163.23

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

Rent Owing To Hearing Date	\$36,620.98
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords since the application was filed	- \$2,000.00
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	- \$2,000.00
Less the amount of the interest on the last month's rent deposit	- \$141.32
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 Landlords	\$32,665.66
Plus daily compensation owing for each day of occupation starting	\$65.75 (per day)