



Order under Section 69 Residential Tenancies Act, 2006

Citation: IMH POOL XV LP v Diaz, 2022 ONLTB 14006

Date: 2022-12-06

File Number: LTB-L-011746-22

In the matter of: 101, 91 SILVER SPRINGS BLVD
SCARBOROUGH ON M1V1R1

Between: IMH POOL XV LP Landlord

And

Francisco Diaz, Yesenia Diaz Tenant

IMH POOL XV LP (the 'Landlord') applied for an order to terminate the tenancy and evict Francisco Diaz, Yesenia Diaz (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on August 31, 2022.

The Landlord, the Landlord's representative Emma Bennet(EB), and the Tenant attended the hearing.

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 \$2,555.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$84.00. This amount is calculated as follows: \$2,555.00 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 August 31, 2022 are \$20,456.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$2,555.00 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.

9. Interest on the rent deposit, in the amount of \$20.41 is owing to the Tenant for the period from October 29, 2021 to August 31, 2022.
10. The Tenants did not dispute the rent arrears, but they claimed to have financial difficulties paying their rent because they have seven dogs to care for. The Tenants confirmed during the hearing that they have continued to work full-time since their tenancy commenced.
11. The Tenants also requested to raise a number of issues, including plumbing and windows, pursuant to section 82 of the Residential Tenancies Act, 2006 (the 'Act').
12. EB objected to this request arguing that the Tenant did not notify the Landlord of his intention to raise these issues and that they did not know what the issues were or what relief the Tenant would be seeking. EB claim that the Landlord addressed the bathtub clog issue on February 24, 2022.
13. Section 82 of the Act provides that at a rent arrears hearing the Board shall permit the Tenant to raise any issue that could be the subject of an application made by the tenant if the tenant provides the landlord and the Board with advance disclosure of the issue and the evidence in accordance with the Board's rules or provides an explanation satisfactory to the Board explaining why the tenant could not comply with the disclosure requirements.
14. Rule 19.4 of the Rules of Procedure of the Landlord and Tenant Board states:

“Unless the LTB directed or ordered otherwise, a tenant who intends to raise issues under sections 82(1) or 87(2) of the RTA during an application about rent arrears shall provide the other parties and the LTB the following at least 7 days before the scheduled CMH or hearing: 1. A written description of each issue the tenant intends to raise; and ...”
15. The Tenants did not explain why he did not provide the Landlords with any details about the maintenance issues he intended to raise at the hearing other than that he needed more time to do so. The evidence the Tenants wanted to rely upon was fairly extensive, and I do not find that the Landlords could have a fair hearing without knowing the case against them. Therefore, I cannot consider the Tenant's section 82 issues, but they may file his own application to have these concerns considered by the Board.
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 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:**
 - \$30,862.00 if the payment is made on or before December 17, 2022. 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 December 17, 2022 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 December 17, 2022**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$18,066.59. 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 \$84.00 per day for the use of the unit starting September 1, 2022 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 December 17, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 18, 2022 at 2.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 17, 2022, then starting December 18, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 December 18, 2022.

December 6, 2022

Date Issued

Percy Laryea

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 June 18, 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 17, 2022

Rent Owing To December 31, 2022	\$30,676.00
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	- \$
Total the Tenant must pay to continue the tenancy	\$30,862.00

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

Rent Owing To Hearing Date	\$20,456.00
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 of the last month's rent deposit	- \$2,555.00
Less the amount of the interest on the last month's rent deposit	- \$20.41
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	- \$
Total amount owing to the Landlord	\$18,066.59
Plus daily compensation owing for each day of occupation starting September 1, 2022	\$84.00 (per day)

