



Order under Section 69 Residential Tenancies Act, 2006

Citation: High Park Bayview Inc c/o GWL Realty Advisors Residential Inc v Barry, 2022 ONLTB 12146

Date: 2022-11-28

File Number: LTB-L-023091-22

In the matter of: 626, 77 QUEBEC AVE
TORONTO ON M6P2T4

Between: High Park Bayview Inc Landlord
c/o GWL Realty Advisors
Residential Inc

And

Mohammed Lamarana Barry Tenant

High Park Bayview Inc c/o GWL Realty Advisors Residential Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Mohammed Lamarana Barry (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 10, 2022. The Landlord's representative, Martin Zarnett, and the Tenant attended the hearing.

Preliminary Issue:

1. The Tenant requested an adjournment of the hearing to have more time to discuss this matter with the Landlord, as well as to better prepare himself for the hearing. The Tenant acknowledged that he was notified of this hearing over the period of October 7 to 10, 2022.
2. The Landlord's representative submitted that the Tenant had plenty of time to prepare for the hearing, and that an adjournment of the hearing would be prejudicial to the Landlord.
3. I am satisfied that the Tenant had an adequate amount of time, a month, to prepare for this hearing, and that any delay in the hearing would not be fair to the Landlord. For these reasons, the Tenant's request for an adjournment is denied.

Determinations:

1. The Landlord served the Tenant with a valid Notice to End the 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 \$1,500.79. It is due on the 1st day of each month.
4. Based on the monthly rent, the daily rent/compensation is \$49.34. This amount is calculated as follows: \$1,500.79 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 November 30, 2022, on the basis of payments received by the Landlord at the time of the hearing, are \$23,307.74. The Tenant acknowledged that he owes \$23,307.74 in rent arrears to the Landlord; however, the Tenant testified that on the day of the hearing he made an arrears payment of \$3,623.00 to the Landlord.
7. The Landlord's representative submitted that as of the time of the hearing, the Landlord had not yet received the \$3,623.00 payment from the Tenant, but the Landlord would credit the Tenant's account when the funds were received.
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 \$1,483.00 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.
10. Interest on the rent deposit, in the amount of \$15.31 is owing to the Tenant for the period from January 1, 2022 to November 10, 2022.

Relief From Eviction

Landlord's Evidence

11. The Landlord's representative submitted that the Landlord sent letters to the Tenant on April 5 and 29, 2022, and again on October 19, 2022, offering an arrears repayment plan to the Tenant, and the Tenant responded; however, the Tenant never adhered to the payment plan. The representative stated that this has resulted in significant arrears that the Landlord has had to endure for over one year.
12. The Landlord's representative submitted further that, given the large total of the rent arrears, and the Tenant's poor repayment history to date, the Landlord was not confident in the Tenant's ability to pay the arrears in a timely manner, in addition to the monthly rent. For this reason, the representative submitted, the Landlord does not want a payment plan imposed by the Board.

Tenant's Evidence

13. The Tenant testified that he suffered a neurological breakdown in October 2021, had to quit his job in November 2021 as a result of his illness, and endured significant financial losses in the stock market during the winter of 2021/2022. The Tenant explained that as a result of these personal difficulties, he could not afford to pay for his rent, and therefore he accumulated arrears.
14. The Tenant testified further that his health improved late in August 2022, and he accepted a new full-time job as a consultant in September 2022. The Tenant noted that with this

job, in addition to his second job working in a library, his current monthly salary is approximately \$7,500.00. The Tenant remarked that he has a plan to pay the arrears on a monthly basis, in addition to his rent, and that his rent arrears will be paid for by the end of May 2023. The Tenant asserted that he is eager to retain his tenancy through a payment plan – he just needs some time to financially recover from his recent personal struggles.

Analysis

15. 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 April 30, 2023 pursuant to subsection 83(1)(b) of the Act.
16. On the basis of the evidence provided, I am satisfied that the Tenant is fully employed and that his monthly income has significantly increased; however, I am not satisfied that the Tenant's proposed payment plan, given the large sum of rent arrears, is financially viable. The Tenant did not establish, through documentary evidence such as pay slips, the exact monthly earnings from his two sources of employment, and the month-to-month consistency of those earnings.
17. However, given the Tenant's improved financial capacity, and motivation to retain his tenancy, I find that it is reasonable and appropriate to postpone the Tenant's eviction to April 30, 2023. This postponement will provide the Tenant with significant additional time and opportunities to void the eviction order, and retain his tenancy, through the payment of his rent arrears and ongoing rent. This postponement will provide the Landlord with an opportunity to receive payment for the arrears owing, while also providing the Landlord with a definitive eviction date if the Tenant fails to void this order. Accordingly, I find that this postponement is fair to both parties.

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:**
 - \$23,493.74 if the payment is made on or before November 30, 2022. See Schedule 1 for the calculation of the amount owing.

OR

 - \$24,994.53 if the payment is made on or before December 31, 2022. See Schedule 1 for the calculation of the amount owing.

OR

 - \$26,495.32 if the payment is made on or before January 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$27,996.11 if the payment is made on or before February 28, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$29,496.90 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$30,997.69 if the payment is made on or before April 30, 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 April 30, 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 April 30, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$20,988.04. 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 \$49.34 per day for the use of the unit starting November 11, 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 April 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 10, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before April 30, 2023, then starting May 1, 2023, 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 May 1, 2023.

November 28, 2022

Date Issued

Frank Ebner

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 November 1, 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 November 30, 2022

Rent Owing To November 30, 2022	\$23,307.74
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	\$23,493.74

B. 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	\$24,808.53
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	\$24,994.53

C. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before January 31, 2023

Rent Owing To January 31, 2023	\$26,309.32
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	\$26,495.32

D. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 28, 2023

Rent Owing To February 28, 2023	\$27,810.11
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	\$27,996.11

E. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before March 31, 2023

Rent Owing To March 31, 2023	\$29,310.90
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	\$29,496.90

F. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before April 30, 2023

Rent Owing To April 30, 2023	\$30,811.69
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	\$30,997.69

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

Rent Owing To Hearing Date	\$22,300.35
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	- \$1,483.00
Less the amount of the interest on the last month's rent deposit	- \$15.31
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	\$20,988.04
Plus daily compensation owing for each day of occupation starting November 11, 2022	\$49.34 (per day)