



Order under Section 69 Residential Tenancies Act, 2006

Citation: IMH POOL XV LP v Fujino, 2022 ONLTB 12607

Date: 2022-11-22

File Number: LTB-L-017803-22

In the matter of: 309, 85 SILVER SPRINGS BLVD
Toronto ON M1V1W3

Between: IMH POOL XV LP Landlord

And

Lindsey Fujino, Michael Fujino Tenant

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

This application was heard by videoconference on October 11, 2022.

The Landlord’s agent Halima Channiwala (HC), the Landlord’s representative S. Enriquez and the Tenant Lindsey Fujino (LF) attended the hearing.

Determinations:

1. As a preliminary matter, LF alleged she was not served with the Landlord’s Form N4, stating “I’m not denying they mailed it, I’m just saying... I never got a notice up until this point”. Pursuant to Rule 3.9 of the *Rules*, a document is considered served on the a). fifth day after mailing. The Landlord produced a certificate of service, stating the Form N4 was mailed to the correct rental unit address on March 2, 2022. In addition to filing a certificate of service, HC testified the Form N4 was manually noted as being sent in the Landlord’s internal database as further confirmation of the document being sent. I found HC’s evidence believable and find service was rendered on the fifth day after it was mailed.
2. I therefore find the Landlord served the Tenants 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 \$1,836.27. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$60.37. This amount is calculated as follows: \$1,836.27 x 12, divided by 365 days.

Rent Amount

6. The Tenant acknowledges there is unpaid rent, but claims (i) that the Landlord agreed to waive the monthly rent for December 2021 and January 2022; (ii) that the Tenants made an additional \$2000 payment to the Landlord in August 2022 which was not accounted for in the Landlord's ledger; and (iii) that the Landlord refused a payment of \$4500 from the rent bank on the Tenants' behalf. Although the Tenant rendered no documentary evidence in support at the hearing, the Tenant indicated she had supporting documentation that she was unable to access on the day of the hearing. The Landlord denied any waiver of rent for December 2021 and January 2022, denies receiving any rent payments post July 2022 and denies refusing payment from the rent bank.
7. On consent of both parties, I allowed the parties to file written post-hearing submission on the above-noted issues on or before October 24, 2022. The Tenant did not file any post-hearing written submissions. Upon hearing the evidence of the parties at the hearing and upon reviewing the post hearing written submissions of the Landlord, I found the Landlord's ledger showing dates and amounts paid to be more reliable as to the rent owing.
8. I therefore find the Tenant has paid \$4,731.00 to the Landlord since the application was filed and that the rent arrears owing to October 31, 2022 are \$14,466.39
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. The Landlord collected a rent deposit of \$1,814.50 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.
11. Interest on the rent deposit, in the amount of \$33.35 is owing to the Tenant for the period from April 1, 2021 to October 11, 2022.

Section 83

12. Section 83 requires that I consider all the circumstances, including the Tenants' and the Landlord's situations to determine if it would be appropriate to grant section 83 relief from eviction.
13. The Landlord seeks a standard order, noting the arrears are significant and that there has been repayment plan discussions with the Tenant prior to the hearing date.
14. LF noted her family has suffered some unfortunate health issues and consequently, she was forced to take time off work. At the time of the hearing, LF was staying temporarily at a family member's house and noted she has two children under 2 and is able to leave the rental unit, but would require at least 1 month to secure alternative accommodations.
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 January 3, 2023 pursuant to subsection 83(1)(b) of the Act.

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:**
 - \$16,488.66 if the payment is made on or before November 30, 2022. See Schedule 1 for the calculation of the amount owing.

OR

 - \$18,324.93 if the payment is made on or before December 31, 2022. See Schedule 1 for the calculation of the amount owing.

OR

 - \$20,161.20 if the payment is made on or before January 3, 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 3, 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 3, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$11,632.34. 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 Tenants shall also pay the Landlord compensation of \$60.37 per day for the use of the unit starting October 12, 2022 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before December 3, 2022, the Tenants will start to owe interest. This will be simple interest calculated from December 4, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before January 3, 2023, then starting January 4, 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 January 4, 2023.

November 22, 2022
Date Issued

Peter Nicholson
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.

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	\$21,033.66
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,731.00
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	\$16,488.66

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	\$22,869.93
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,731.00
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	\$18,324.93

C. 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	\$24,706.20
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,731.00
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	\$20,161.20
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D. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$18,025.19
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,731.00
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	- \$1,814.50
Less the amount of the interest on the last month's rent deposit	- \$33.35
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	\$11,632.34
Plus daily compensation owing for each day of occupation starting October 12, 2022	\$60.37 (per day)