



Order under Section 69 Residential Tenancies Act, 2006

Citation: Jamasi v Ramirez, 2022 ONLTB 11575

Date: 2022-11-10

File Number: LTB-L-015609-22

In the matter of: 29 CASELY AVE
RICHMOND HILL ON L4S0K3

Between: Zohra Jamasi Landlord

And

Edwin Ramirez, Margarita Ramirez Tenants

Zohra Jamasi (the 'Landlord') applied for an order to terminate the tenancy and evict Edwin Ramirez, Margarita Ramirez (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on September 27, 2022.

The Landlord and the Landlord's Legal Representative, R. Mahavalirajan and the Tenants attended the hearing.

Determinations:

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 \$2,900.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$95.34. This amount is calculated as follows: \$2,900.00 x 12, divided by 365 days.
5. The Tenants has paid \$2,900.00 to the Landlord since the application was filed. This reflects August 2022 rent waived in consideration for compensation owing to the Tenant pursuant to an N12 Notice that was served.
6. The rent arrears owing to September 30, 2022 are \$37,700.00.
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 \$2,900.00 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.
9. Interest on the rent deposit, in the amount of \$94.60 is owing to the Tenants for the period from November 9, 2019 to September 27, 2022.
10. The Landlord was informed that pursuant to subsection 207(1) of the *Residential Tenancies Act, 2006* (the 'Act') the monetary jurisdiction of the Board is \$35,000.00.
11. Subsections 207(1), (2) and (3) states as follows,
 - (1) The Board may, where it otherwise has the jurisdiction, order the payment to any given person of an amount of money up to the greater of \$35,000 and the monetary jurisdiction of the Small Claims Court.
 - (2) A person entitled to apply under this Act but whose claim exceeds the Board's monetary jurisdiction may commence a proceeding in any court of competent jurisdiction for an order requiring the payment of that sum and, if such a proceeding is commenced, the court may exercise any powers that the Board could have exercised if the proceeding had been before the Board and within its monetary jurisdiction
 - (3) If a party makes a claim in an application for payment of a sum equal to or less than the Board's monetary jurisdiction, all rights of the party in excess of the Board's monetary jurisdiction are extinguished once the Board issues its order
12. The Landlord's legal representative indicated they understood the implications and acknowledged that the amount exceeding the Board's jurisdiction would be extinguished by this order pursuant to subsection 207(3) of the Act and instructed the Board they wished to proceed with the application.

Relief from Eviction

13. The Tenants testified that they stopped receiving income in September 2021 when their social assistance income was placed on hold. The only income they were receiving at that time was Child Tax Credit and whatever they could borrow. They appealed the decision regarding the hold on their benefits and that hearing is scheduled for October 19, 2022. The Tenants testified that they are not expecting to receive any retroactive benefits if the appeal is successful.
14. The Tenants testified that once they start receiving their social assistance income again, their monthly income is approximately \$4,000.00. The Tenants suggested a payment plan that would see the arrears paid off in 6 years. The Tenants testified that they will pay the monthly rent of \$2,900.00 as it comes due and pay an extra \$500.00 around the 15th of the month until the arrears are paid in full. In the alternative, the Tenants requested until January 2023 to vacate the unit.
15. The Landlord is seeking a standard order. The Landlord's legal representative submits that the money owing to the Landlord is already beyond the monetary jurisdiction of the Board and any delay would be prejudicial to the Landlord. The Landlord's legal representative submits that the Landlord is under financial strain and has to borrow money to pay the mortgage.

16. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'). The Tenant is requesting six years to pay the arrears. I do not find that the Tenant's monthly income supports the monthly rent and arrears payment the Tenants proposed when I also take into consideration the Tenant's monthly expenses, therefore I do not find that a six-year payment plan is reasonable or appropriate in these circumstances. The Tenants testified that they did receive some income during the last year, and none of that went towards the rent. The Tenants have made no payments since at least September 2021. Given the delay in issuing this order, I find that the Tenant has been afforded sufficient time and 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 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:**
 - \$43,686.00 if the payment is made on or before November 21, 2022. See Schedule 1 for the calculation of the amount owing. This amount exceeds the monetary jurisdiction of the Board. This is an amount that the Tenant can choose to pay if they choose not to vacate the rental unit. The Board is not ordering this amount to be paid. This amount is optional and only required if the Tenant elects to remain in the rental unit. Therefore, the Board is not ordering this amount to be paid and is not ordering an amount that exceeds the limit.
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 has paid the full amount owing as ordered plus any additional rent that became due after November 21, 2022 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 November 21, 2022**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$34,565.58. 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 \$95.34 per day for the use of the unit starting September 28, 2022 until the date the Tenants moves out of the unit.
7. If the Tenants does not pay the Landlord the full amount owing on or before November 21, 2022, the Tenants will start to owe interest. This will be simple interest calculated from November 22, 2022 at 4.00% annually on the balance outstanding.

8. If the unit is not vacated on or before November 21, 2022, then starting November 22, 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 November 22, 2022.

November 10, 2022
Issued

Date
Emily Robb _____
Member, Landlord and Tenants 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 May 22, 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before November 21, 2022

Rent Owing To November 30, 2022	\$46,400.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$2,900.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$
Total the Tenants must pay to continue the tenancy	\$43,686.00

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

Rent Owing To Hearing Date	\$40,274.18
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$2,900.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$2,900.00
Less the amount of the interest on the last month's rent deposit	- \$94.60
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$
Total amount owing to the Landlord	\$34,565.58
Plus daily compensation owing for each day of occupation starting September 28, 2022	\$95.34 (per day)

