



Order under Section 69 Residential Tenancies Act, 2006

Citation: Kim v Mahdieh, 2022 ONLTB 10766

Date: 2022-11-10

File Number: LTB-L-045488-22

In the matter of: 5504, 197 Yonge Street
Toronto Ontario M5B0C1

Between: Sook Kyong Kim Landlord

And

Arash Mahdieh Tenant

Sook Kyong Kim (the 'Landlord') applied for an order to terminate the tenancy and evict Arash Mahdieh (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on September 13, 2022.

The Landlord and the Landlord's legal representative, Mohammed Jacquesson, attended the hearing. The Tenant also 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 \$1,600.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$52.60. This amount is calculated as follows: \$1,600.00 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 September 30, 2022 are \$36,800.00.
7. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,600.00 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.

PRELIMINARY ISSUE: TENANT REQUESTED AN ADJOURNMENT

9. The Tenant requested an adjournment claiming he did not receive the N4 notice.
10. The position of the Landlord is that the Tenant was served an N4 notice by four different methods of service: email to the Tenant's email address on file, leaving an envelope with a copy of the N4 enclosed with the building concierge addressed to the Tenant, serving a copy by placing a copy of the N4 under the door of the rental unit and mailing a copy of the N4 to the rental unit address where the Tenant still resides.
11. The Landlord submitted evidence of serving the Tenant the N4 by four different methods of service, I am only considering two of the methods to be valid. Pursuant to Rule 3 - Service of Documents on a Person or Party, leaving a notice with a concierge is not an approved method of delivery for a notice and I did not consider this in my decision. Pursuant to Rule 3.3 c. Service of Documents on a Person or Party a Landlord may serve notice to a Tenant by email if:
 - i) during the tenancy the tenant or former tenant had consented in writing to service by email; and
 - ii) if it can be proven that the contents actually came to the attention of the tenant or former tenant.

The Landlord did not submit evidence to support service by email was accepted by the Tenant and therefore I am not considering this in my decision.

The Landlord submitted evidence in the form of two certificates of service that identified service of the N4 to the Tenant by mail, and by placing a copy under the door and met the requirements pursuant to s. 43 of the Act.

12. The Tenant's request for an adjournment based on his claim he did not receive the N4 was denied. The standard of proof in proceedings before this Board is "proof on a balance of probabilities." By that standard, the party bearing the burden of proof must show with evidence that, "more likely than not", their assertions are true. With the evidence before me and on the balance of probabilities I find it more likely than not, the Landlord properly served the N4 to the Tenant by two Board approved methods, and the Tenant got the notices and chose not to acknowledge them.

LANDLORD'S APPLICATION: TENANT DISPUTED ARREARS

13. The position of the Tenant is that he does not owe the arrears in the amount the Landlord claims in the application. Tenant does not dispute he owes \$5,000.00 in arrears and claimed he has paid all but \$5,000.00 to the Landlord by cheque that the Landlord has not accounted for in the application. The Tenant he was unprepared to proceed due to not getting the N4 and claimed he had insufficient time to prepare for the hearing and retain evidence required from his on line banking to establish that payments were actually made

that were not reflected in the Landlord's application. The Tenant claims his on line bank app does not allow for viewing of cheques and requires a request for hard copies to prove his payments which is why he did not have them at the time of the hearing.

14. The position of the Landlord is that the Tenant has not made any payments since January 2021. The Landlord has communicated with the Tenant through text and letters informing the Tenant he is in arrears as early as February 2021 and the Tenant is well aware of the claims by the Landlord with respect to arrears. To support their claim the Landlord submitted text messages between the Landlord and the Tenant where the Landlord informs the Tenant the rent cheques have bounced and attempted to acquire the funds in other ways, like replacement cheques or bank drafts. The Tenant never disputes the claims by the Landlord and instead provides excuses as to why the cheques bounced claiming the funds are available. Further text messages submitted by the Landlord show continued requests for rent and at no time, does the Tenant say the rent has been paid but instead continues to offer excuses.
15. The onus rests with the Tenant to provide sufficient evidence to support his claim he had paid rent the Landlord had not accounted for in the application. I do not find the Tenant's evidence persuasive enough, relying solely on his oral submission of assertion that he has paid rent by cheque. The Tenant's lack of particulars and specific details regarding when and how he paid the Landlord by cheque, are such that I am not satisfied the Tenant have met that burden of proof. I prefer the evidence of the Landlord specifically the text communication with the Tenant and the letter sent by the Landlord's legal representative in December 2021. The Tenant was made fully aware of the ongoing arrears and had ample time prior to the hearing to gather evidence to support his claims of payment.
16. I find the Landlord has filed all the necessary documents, and met all the Board requirements and guidelines with respect to the notice and the application and I accept the arrears submitted by the Landlord for this order.
17. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations
18. 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, including whether the Landlord attempted to negotiate a repayment agreement with the Tenant. Given the quantum of the arrears and the fact that the arrears are approaching the Board jurisdictional amount, and the fact that the Tenant has made no payment since January 2021, and the prejudice to the Landlord, I find that it would be unfair to delay or grant relief from eviction pursuant to subsection 83(1) of the Act.
19. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations
20. This order contains all reasons for the determinations and order made. No further reasons will be issued.

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:
 - \$40,201.00 if the payment is made on or before November 21, 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 November 21, 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 November 21, 2022
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$34,484.80. 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 \$52.60 per day for the use of the unit starting September 14, 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 November 21, 2022, the Tenant 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
Date Issued

Greg Brocanier
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 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 Tenant 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	\$40,000.00
Application Filing Fee	\$201.00
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	\$40,201.00

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

Rent Owing To Hearing Date	\$35,883.80
Application Filing Fee	\$201.00
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	- \$1,600.00
Less the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord	\$34,484.80
Plus daily compensation owing for each day of occupation starting September 14, 2022	\$52.60 (per day)

2022 ONLTB 10766 (CanLI)

