



Order under Section 69 Residential Tenancies Act, 2006

Citation: Hafez v Mourad, 2022 ONLTB 6597

Date: 2022-11-09

File Number: LTB-L-014342-22

In the matter of: 4417, 70 TEMPERANCE STREET
TORONTO ON M5H0B1

Between: Rania Hafez Landlord

And

Ahmed Mourad Tenant

Rania Hafez (the 'Landlord') applied for an order to terminate the tenancy and evict Ahmed Mourad (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on September 15, 2022. The Landlord, the Landlord's legal representative, Kadian Foster, the Landlord's witnesses, Clevon Clarke and Sergey Stremilov, and the Tenant attended the hearing. The Tenant spoke with tenant duty counsel on the hearing date.

The application is amended to include the correct postal code for the rental unit as M5H 0B1.

Determinations:

1. As of the hearing date, the Tenant was still in possession of the rental unit.
2. The lawful rent is \$2,350.00. It is due on the 1st day of each month.
3. Based on the Monthly rent, the daily rent/compensation is \$77.26. This amount is calculated as follows: $\$2,350.00 \times 12$, divided by 365 days.
4. As of the date of the hearing, the Tenant has not made any payments since the application was filed.
5. The parties agree that the rent arrears owing to September 30, 2022 are \$21,850.00.
6. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
7. The Landlord collected a rent deposit of \$2,350.00 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.
8. Interest on the rent deposit, in the amount of \$41.18 is owing to the Tenant for the period from April 1, 2021 to September 15, 2022.

9. At the onset of the hearing, the Tenant raised a concern regarding having not been served with the originating N4 notice.
10. The certificate of service filed with the Board indicates that it was served under the door of the rental unit on February 2, 2022 by an agent of the Landlord, Clevon Clarke. Mr. Clarke provided oral testimony at the hearing which confirmed the contents of the COS. He also indicated that he had just started his own process serving company prior to serving the notice. He testified that it was difficult to get under the door in the envelope, so he removed the N4 Notice from the envelope and then slid it back and forth under the door until it was inside. He recalled that he had to get permission to serve the notice from the concierge and security and that it was approximately 4:30 in the afternoon on February 2nd. At first he could not recall if it was February 2nd or third, but that he could confirm it was on the Wednesday of that week for sure.
11. The Landlord also called on their witness, Sergey Stremilov, to give evidence. Mr. Stremilov is the supervisor for security at the residential complex and referred to his notes regarding February 2, 2022. Mr. Stremilov testified that he was not at the building after 4pm, but that one of his staff had called him and asked for permission to let Mr. Clarke up to the 44th floor to serve a document. Under cross examination, Mr. Stremilov confirmed that the time was around 4:41pm on February 2nd where he gave the authorization.
12. In order to provide the Tenant with an opportunity to dispute the service of the N4 Notice, I permitted the Tenant to take a video of himself to illustrate the potential impossibility of the service of the notice. The parties were given some time to review the footage and then it was considered in the hearing. The video shows weather stripping around the door. The Tenant used a folded letter in an envelope to illustrate the alleged service. From the video it would appear as though it would be impossible to get the folded letter in an envelope under the door.
13. The Landlord was unaware of when the weather stripping was put on the door and the Tenant could not recall when he had put it there.
14. Although I acknowledge that the Tenant claims to have not received the notice, I don't find his illustration in the video overly supportive of his position and in the face of the compelling oral testimony of two of the Landlord witnesses. The Tenant made no attempt to remove the folded letter from the envelope to try to slide it under his door. In any event, based on the evidence before me, I find it more likely than not that the Tenant was served the N4 notice on February 2, 2022, when Mr. Clarke slid the notice under the Tenants door.
15. The Tenant did not pay the outstanding rent by the termination date of February 17, 2022. In fact, as of the date of the hearing, the Tenant had not made a single payment to the Landlord since the notice was served or the application was filed.
16. The Tenant testified that he had been out of work due to Covid and that he was in the process of securing a new job and he hoped to have enough money to cover the rent plus pay back the arrears to the Landlord over an extended period of time. He indicated that his work is going to be commission based for tech sales. He had also used up all of his savings and as of the date of the hearing, he was still unemployed. The Tenant also indicated that he suffers from depression. The Tenant requested that a payment plan not

start for at least 5 weeks until he could get on his feet and that hopefully he would be able to pay \$500 to the Landlord towards the arrears each month until paid in full.

17. The Landlord was opposed to the request for a payment plan based on the fact that they had not received any money at all since February of 2022 and the Tenant owes in excess of \$21,000.00 and the Landlord has had to pay the bills for the rental unit and for their own housing. The Landlord also indicated that the costs associated with the rental unit are actually more than what the Landlord is charging in rent which is causing her financial hardship. Also, because the Tenant has made no good faith efforts to pay anything at all and because the Tenant is unemployed.
18. Based on the evidence and circumstances of both parties, I do not think a payment plan is appropriate under these circumstances. The Tenant does not have any income source and has not made any payments to the Landlord in a considerable amount of time. The Tenant could not provide any evidence in support of the amount of arrears they could pay or the dates they could pay it. I don't see this as an opportunity to preserve a viable tenancy. The arrears are so substantial that if they continue to accrue, the Landlord will be further prejudiced with no real indicator of when or how the Tenant will be able to pay them back.
19. 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 November 23, 2022 pursuant to subsection 83(1)(b) 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:**
 - \$26,736.00 if the payment is made on or before November 23, 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 30, 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 23, 2022**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$18,453.72. 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 \$77.26 per day for the use of the unit starting September 16, 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 23, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 24, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 23, 2022, then starting November 24, 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 24, 2022.

November 9, 2022
Date Issued

Terri van Huisstede
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 24, 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.

*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

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	\$26,550.00
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	\$26,736.00

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

Rent Owing To Hearing Date	\$20,658.90
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 of the last month's rent deposit	- \$2,350.00
Less the amount of the interest on the last month's rent deposit	- \$41.18
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	\$18,453.72
Plus daily compensation owing for each day of occupation starting September 16, 2022	\$77.26 (per day)