



Order under Section 69 Residential Tenancies Act, 2006

Citation: Apollo Property Management Ltd. v Ganza, 2022 ONLTB 9459

Date: 2022-11-04

File Number: LTB-L-011770-22

In the matter of: 38, 2640 DRAPER AVE
OTTAWA ON K2H8V3

Between: Apollo Property Management Ltd., ISHRAN SIMMONS Landlord

And

Bunzigiye Ganza Tenant

Apollo Property Management Ltd., ISHRAN SIMMONS (the 'Landlord') applied for an order to terminate the tenancy and evict Bunzigiye Ganza (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 12, 2022.

Only the Landlord's Representative Donna Dames attended the hearing.

As of 1:30p.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. As result, the hearing proceeded with only the Landlord's evidence.

Determinations:

No Further Adjournment Granted

1. This matter had a previous hearing date of August 31, 2022 that was adjourned at the request of the Applicant. On October 7, 2022 the Tenant submitted to the Tribunals Ontario Portal (the Portal) the same request to reschedule a hearing with a date of August 31, 2022, that had already been submitted prior to the August 31, 2022 hearing date. In both requests the Tenant did indicate that he was unavailable in September 2022 and October 2022 because they are away from Ottawa on a six-month contract.
2. The previous adjudicator granted an adjournment of the August 31, 2022 hearing but did not approve any further unavailable dates for the parties and as such the matter was rescheduled in accordance with the Landlord and Tenant Board's (the Board) usual scheduling practice.
3. The Tenant was served the October 12, 2022 Notice of Hearing by email on September 22, 2022. The Landlord's Representative also indicated that she told the Tenant about the October 12, 2022 hearing.

4. On October 12, 2022 at 6:25p.m. after the conclusion of the hearing a copy of an email addressed to the Landlord's Representative as well as the Board was uploaded to the Portal again asking for an adjournment of the October 12, 2022 hearing because the Tenant cannot attend either physically or virtually.
5. Sending in a request for a matter to be adjourned is not a guarantee that a hearing will be adjourned. The Board's form to request that a hearing be rescheduled indicates that "the parties or their representatives must contact the LTB to find out if the LTB has granted the request". Additionally, the form also states that "the hearing will proceed on the original date if the LTB does not grant your request... If the Respondent does not attend the hearing, the LTB may proceed without the respondent".
6. It is not clear to me why not being physically in Ottawa would prohibit the Tenant from attending a virtual hearing. As the Tenant did not attend the hearing to ask for an adjournment, nor send someone to speak on the Tenant's behalf the matter was not adjourned and proceeded with only the Landlord's evidence. Additionally, as the matter had already been adjourned once adjourning the matter again would be contrary to my obligation under section 183 of the *Residential Tenancies Act* ('the Act') to conduct an expeditious proceeding.

The Application

7. 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.
8. As of the hearing date, the Tenant was still in possession of the rental unit.
9. The lawful rent is \$1,386.00. It is due on the 1st day of each month.
10. Based on the Monthly rent, the daily rent/compensation is \$45.57. This amount is calculated as follows: \$1,386.00 x 12, divided by 365 days.
11. The Tenant has paid \$12,645.00 to the Landlord since the application was filed.
12. The rent arrears owing to October 31, 2022 are \$1,215.00.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. The Landlord collected a rent deposit of \$1,295.00 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.
15. Interest on the rent deposit, in the amount of \$112.70 is owing to the Tenant for the period from October 8, 2016 to October 12, 2022.
16. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. In making that determination I have considered that the Landlord did not attempt to negotiate a repayment agreement

with the Tenant. However, the Tenant did not attend the hearing to provide any evidence that would be relevant to my analysis under section 83 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:**
 - \$2,787.00 if the payment is made on or before November 15, 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 15, 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 15, 2022.**
5. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the arrears of rent, and the cost of filing the application the Landlord is entitled to by \$845.86. See Schedule 1 for the calculation of the amount owing. However, the Landlord is authorized to deduct from the amount owing to the Tenant \$45.57 per day for compensation for the use of the unit starting October 13, 2022 until the date the Tenant moves out of the unit.
6. If the Tenant does not pay the Landlord the full amount owing on or before November 15, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 16, 2022 at 4.00% annually on the balance outstanding.
7. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
8. If the unit is not vacated on or before November 15, 2022, then starting November 16, 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 16, 2022.

November 4, 2022
Date Issued

 Amanda Kovats
 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 16, 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 15, 2022

Rent Owing To November 30, 2022	\$15,246.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$12,645.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Total the Tenant must pay to continue the tenancy	\$2,787.00

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

Rent Owing To Hearing Date	\$13,020.84
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$12,645.00
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	- \$1,295.00
Less the amount of the interest on the last month's rent deposit	- \$112.70
Total amount owing to the Landlord	\$(845.86)
Plus daily compensation owing for each day of occupation starting October 13, 2022	\$45.57 (per day)