



Order under Section 78(6) Residential Tenancies Act, 2006

Citation: Khoshaba v Franze, 2024 ONLTB 38383

Date: 2024-05-27

File Number: LTB-L-026771-24

In the matter of: 126, 1725 ERNEST AVE
LONDON ON N6E2W3

Between: Sargon Khoshaba

And

Elizabeth Franze
Tyla Franze

I hereby certify this is a
true copy of an Order dated

MAY 27, 2024

Landlord and Tenant Board

Landlord

Tenants

Sargon Khoshaba (the 'Landlord') applied for an order to terminate the tenancy and evict Elizabeth Franze and Tyla Franze (the 'Tenants') and for an order to have the Tenants pay the rent they owe because the Tenants failed to meet a condition specified in the order issued by the Board on March 14, 2024 with respect to application LTB-L-058337-23.

This file was directed to a hearing to clarify the amount of rent arrears that have been paid by the Tenants. A hearing was held by videoconference on May 16, 2024 to consider this application.

Only the Landlord, the Landlord's Agent Danni Hanna and the Landlord's Legal Representative Patrick Pacheco attended the hearing.

On May 12, 2024, the Tenants submitted a request to reschedule the hearing. The Tenants' request was not made with the consent of the Landlord. On May 13, 2024, I issued an endorsement denying the Tenants' request to reschedule the hearing. My endorsement advises the Tenants they may request an adjournment on the hearing date however they should be prepared to proceed if the adjournment request is denied.

As of 9:49 a.m., the Tenants were not present or represented at the hearing although properly served with notice of this hearing by the LTB. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. Order LTB-L-058337-23, issued on March 14, 2024, provides that the Landlord can apply to the LTB under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenants to terminate the tenancy and evict the Tenants if the Tenants do not meet certain conditions in the order.

The Breach

2. The Landlord submitted the Tenants breached the order by failing to pay the Landlord the monthly rent for April 2024 on or before April 1, 2024. Paragraph 3 of the order does require the Tenants to have made this payment. Based on the uncontested evidence of the Landlord, I am satisfied the Tenants breached the order by not paying the monthly rent for April 2024 on or before the day it was due.
3. The application was filed within 30 days of the breach.

Arrears owing

4. The previous application includes a request for an order for the payment of arrears of rent and the order requires the Tenants to make payments by specific due dates. Accordingly, in addition to eviction, the Landlord is entitled to request an order for the payment of arrears owing.
5. The Tenants were ordered to pay \$15,143.00 for rent arrears and the application filing fee in the previous order. The amount that is still owing from that order is \$14,500.00 and that amount is included in this order. This order replaces order LTB-L-058337-23.
6. Since the date of the previous order, the Tenants have failed to pay the full rent that became owing for the period from February 1, 2024 to May 16, 2024. The Landlord received a payment from the Tenants on May 1, 2024 in the amount of \$875.00. Therefore the amount owing for this period is \$5,704.60.

Daily compensation

7. The Landlord is entitled to daily compensation from starting May 17, 2024 until the date the Tenants move out of the unit at a daily rate of \$61.35. This amount is calculated as follows: \$1,866.00 x 12 months, divided by 365 days.

The Rent Deposit

8. The Landlord collected a rent deposit of \$1,800.00 from the Tenants and this deposit is still being held by the Landlord.
9. Interest on the rent deposit in the amount of \$118.11 is owing to the Tenants for the period from February 17, 2020 to May 16, 2024.
10. The amount of the rent deposit and interest on the rent deposit are applied to the amount the Tenant is required to pay.

Section 83 Considerations

11. 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. I asked the Landlord if they were aware of any circumstances the Tenants may be experiencing that would make an eviction unfair and they were aware of none. The Tenants did not attend the hearing to provide any evidence or submissions in support of delaying or denying eviction.

Costs

12. The Landlord sought an order requiring the Tenants pay the Landlord's costs. The Landlord's position was the Tenants provided inaccurate information at the original hearing and proposed a payment plan they knew they could not meet. The Landlord argued the Board may have issued a different order if this information was known.
13. The Tenants were not present at the hearing to provide submissions or evidence in response to the Landlord's allegations. The application was only before the Board because the Landlord's application contained information that required clarification. I did not find it would procedurally fair to determine the Tenants acted in an unreasonable manner without the Tenants having the opportunity to make submissions on the issue. For these reasons, I denied the Landlord's request.

It is ordered that:

1. Order LTB-L-058337-23, issued on March 14, 2024, is cancelled.
2. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before June 7, 2024.
3. If the unit is not vacated on or before June 7, 2024, then starting June 8, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. 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 June 8, 2024.
5. The Tenants shall pay to the Landlord \$18,286.49*. This amount represents the rent owing up to May 16, 2024 and the cost of filing the previous application, less the rent deposit and interest the Landlord owes on the rent deposit.
6. The Tenants shall also pay to the Landlord \$61.35 per day for compensation for the use of the unit starting May 17, 2024 to 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 June 7, 2024, the Tenants will start to owe interest. This will be simple interest calculated from June 8, 2024 at 7.00% annually on the balance outstanding.



John Cashmore

Member, Landlord and Tenant Board

May 27, 2024
Date Issued

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 of the Tenant expires on December 8, 2024 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.

* Refer to the attached Summary of Calculations Table.

SUMMARY OF CALCULATIONS TABLE

Amount the Tenants must pay the Landlord:

Reason for amount owing	Period	Amount
Amount of arrears owing from previous order	Up to January 31, 2024	\$14,500.00
New Arrears	from February 1, 2024 to May 16, 2024	\$5,704.60
Less the rent deposit:		-\$1,800.00
Less the interest owing on the rent deposit	to May 16, 2024	-\$118.11
Plus daily compensation owing for each day of occupation starting May 17, 2024		\$61.35 (per day)

Total the Tenants must pay the Landlord:	\$18,286.49 + \$61.35 per day starting May 17, 2024
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