



I hereby certify this is a
true copy of an Order dated
JUNE 13, 2024

Landlord and Tenant Board

Order under Section 69 Residential Tenancies Act, 2006

Citation: Chhour v Taylor, 2024 ONLTB 39984

Date: 2024-06-13

File Number: LTB-L-004638-24

In the matter of: UPPER LEVEL, 24 BLUE SILO WAY
BRAMPTON ON L6X5P6

Between: Bun Huy Chhour Landlords
Donald Chea

And

Chakara Latoya Taylor Tenant

Bun Huy Chhour and Donald Chea (the 'Landlords') applied for an order to terminate the tenancy and evict Chakara Latoya Taylor (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on May 23, 2024.

Only the Landlords and the Landlords' legal representative, Nana Twum-Barima, attended the hearing.

As of 11:39 a.m., the Tenant was 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 Landlords' evidence.

Determinations:

Preliminary Issue

1. The Landlords' representative submitted that a request to reschedule the hearing was uploaded to the Tribunals Ontario Portal (TOP) by the Tenant the day before the hearing on May 22, 2024. The Landlords had not consented to the request. Given the late submission of the request, it was not addressed by the LTB before the hearing.
2. At the hearing, I addressed the request to reschedule as a request for an adjournment. For the reasons that follow, the Tenant's adjournment request was denied.
3. The request asks that the hearing be rescheduled to a new date due to the Tenant's medical appointment for surgery. There are accompanying documents with the request showing the date of the Tenant's surgery being May 23, 2024, and the procedure to be performed.

4. When considering the request to adjourn, the interests of both parties have been considered including the relevant considerations under Guideline 1 and Rule 21.8. Submissions were made by the Landlord's representative that the arrears are significant, and it was noted at the hearing that an adjournment would likely result in the arrears exceeding the monetary jurisdiction of the Board.
5. The Board's Interpretation Guideline 1 Adjourning and Rescheduling Hearings, addresses the requirements for a request to reschedule the hearing and provides:

"The party seeking the hearing's rescheduling should submit a written request to the Board at least five business days before the scheduled hearing, preferably in the form provided by the Board."

6. Rule 28.1 of the Board's Rules of Procedure provides:

21.8 A CMH or hearing may be adjourned at the discretion of a Hearing Officer or Member where satisfied that an adjournment is required to permit an adequate hearing to be held. Relevant factors the LTB may consider in deciding the request include:

- a. the reason for the adjournment and position of the parties;
- b. the issues in the application;
- c. any prejudice that may result from granting or denying the request;
- d. the history of the proceeding including other adjournments or rescheduling; and
- e. the LTB's obligation to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter.

7. The Tenant did not comply with the Board's guideline by not providing at least 5 days notice of the request. Further, the Divisional Court has held in *Lacroix v. Central-McKinlay International Ltd.*, 2022 ONSC 2807 at paragraphs 16 and 17:

Further, it was the tenant's obligation to attend the hearing ready to proceed. If the tenant had requested an adjournment, he would have had to provide the LTB with an explanation – particularly where the lawyer had attended at the LTB to present an offer to buy the property but had then left.

Further still, the LTB generally requires that requests for an adjournment be made in advance of the hearing and not on the day of the hearing. No explanation has been provided as to why the lawyer was suddenly unavailable at the last minute, or, if his unavailability arose at the last minute, how this could have been so given his presence at the LTB prior to the hearing.

8. The Divisional Court also decided in *Wang v. Oloo*, 2023 ONSC 1028 at paragraph 10:

[10] Further, the fresh evidence did not change the result. The doctor's note is inadequate to justify an adjournment. Courts have made this point, repeatedly, about doctor's notes. It is the court, not the doctor, who decides whether the adjournment will be granted. Thus, a doctor's note must obtain sufficient information to enable the court or tribunal to exercise its own judgment as to whether the adjournment should be granted. This should, at a minimum, describe the diagnosis, the effect of the patient's condition on their ability to attend and participate in the hearing, and a statement as to when, in the doctor's opinion, the patient will be well enough to attend court and participate as required. In this case, the LTB reconsideration panel was not satisfied that the doctor's note explained Mr Oloo's inability to participate in the hearing – either by telephone or by Zoom and did not further explain Mr Oloo's failure to attend to request an adjournment. These are factual findings and are not amenable to appeal in this court.

9. Both of these cases confirm the Board's discretion to proceed with a hearing in the absence of a party when no adjournment has been granted prior to the hearing, and when the parties do not follow the Board's process for requesting a rescheduling or adjournment of a hearing.
10. I do not find that the Tenant has complied with the Board's guidelines in relation to requesting the hearing be rescheduled, having only filed materials the day before the hearing. The Tenant did not have anyone appear on their behalf on the date of the hearing to request an adjournment. The prejudice to the Landlords in adjourning the hearing would be significant as the arrears are approaching the monetary jurisdiction of the Board. The request to reschedule is denied.

L1 Application

11. The Landlords 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.
12. As of the hearing date, the Tenant was still in possession of the rental unit.
13. The lawful rent is \$4,000.00. It is due on the 1st day of each month.
14. Based on the Monthly rent, the daily rent/compensation is \$131.51. This amount is calculated as follows: \$4,000.00 x 12, divided by 365 days.
15. The Tenant has not made any payments since the application was filed.
16. The rent arrears owing to May 31, 2024 are \$32,000.00.
17. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.


18. The Landlords collected a rent deposit of \$4,000.00 from the Tenant and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
19. Interest on the rent deposit, in the amount of \$69.59 is owing to the Tenant for the period from September 13, 2023 to May 23, 2024.
20. 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 whether the Landlords attempted to negotiate a repayment agreement with the Tenant and find that 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 Landlords 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 Landlords or to the LTB in trust:**
 - \$36,186.00 if the payment is made on or before June 24, 2024. 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 June 24, 2024 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 June 24, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlords \$27,141.14. 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 Landlords 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 Landlords compensation of \$131.51 per day for the use of the unit starting May 24, 2024 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlords the full amount owing on or before June 24, 2024, the Tenant will start to owe interest. This will be simple interest calculated from June 25, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before June 24, 2024, then starting June 25, 2024, the Landlords 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 Landlords on or after June 25, 2024.

June 13, 2024
Date Issued



Kyle McGraw
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 December 25, 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.

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 June 24, 2024

Rent Owing To June 30, 2024	\$36,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords 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 Landlords owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$36,186.00

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

Rent Owing To Hearing Date	\$31,024.73
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords 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	- \$4,000.00
Less the amount of the interest on the last month's rent deposit	- \$69.59
Less the amount the Landlords owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlords	\$27,141.14
Plus daily compensation owing for each day of occupation starting May 24, 2024	\$131.51 (per day)