



Xue v Wiggins, 2022 ONLTB 11556 (CanLII)

Date: 2022-11-08
File number: LTB-L-015434-22
Citation: Xue v Wiggins, 2022 ONLTB 11556 (CanLII), <<https://canlii.ca/t/k4qbbq>>, retrieved on 2024-08-20



Tribunals Ontario
Landlord and Tenant Board

Tribunaux décisionnels Ontario
Commission de la location immobilière

Order under Section 69 Residential Tenancies Act, 2006

Citation: Xue v Wiggins, 2022 ONLTB 11556

Date: 2022-11-08

File Number: LTB-L-015434-22

In the matter of: 2137 HIXON ST OA
KVILLE ON L6L 1T
3

Between: Lei Xue Landlord

And

Allan Shanley Tenants
Penny Wiggins

Lei Xue (the 'Landlord') applied for an order to terminate the tenancy and evict Allan Shanley, Penny Wiggins (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on September 27, 2022.

Only the Landlord Ying Xue and the Landlord's representative Yun Tao Lin, licensed paralegal attended the hearing.

As of 1:58 p.m., the Tenants were not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Preliminary Issues:

1. The Landlord's representative acknowledged the rent arrears owing would be over \$35,000.00 and agreed that the Landlord would waive their claim for rental arrears in excess of the Board's \$35,000.00 monetary limit.

Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non- payment of Rent (N4 Notice). The Tenants 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 Tenants were still in possession of the rental unit.
3. The lawful rent is \$2,800.00. It is due on the 22nd day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$92.05. This amount is calculated as follows: \$2,800.00 x 12, divided by 365 days.

5. The Tenants have made \$3,800.00 in payments since the application was filed.
6. The rent arrears owing to October 21, 2022 are \$34,300.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.
9. 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 Landlord attempted to negotiate a repayment agreement with the Tenants 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 Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$35,000.00 if the payment is made on or before November 19, 2022, subject to the Board's \$35,000.00 statutory monetary limit, plus the cost of the application. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after November 19, 2022 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before November 19, 2022**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$33,987.25. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$92.05 per day for the use of the unit starting September 28, 2022 until 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 November 19, 2022, the Tenants will start to owe interest. This will be simple interest calculated from November 20, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 19, 2022, then starting November 20, 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 20, 2022.

November 8, 2022

Date Issued

Greg Witt
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 20, 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before November 19, 2022

Rent Owning To November 21, 2022 *adjusted to the Board's monetary limit	\$37,40 0.00 \$35.00 0.00*
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for or an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy *adjusted to the Board's monetary limit	\$35,186.00*

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

Rent Owning To Hearing Date	\$33,801.25
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
Less the amount the Landlord owes the Tenants for or an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total amount owing to the Landlord	\$33,987.25
Plus daily compensation owing for each day of occupation starting September 28, 2022	\$92.05 (per day)