



Oct 16, 2024

**Order under Section 69
Residential Tenancies Act, 2006**

File Number: LTB-L-052202-24

In the matter of: 67 RAVINE PARK CRES
SCARBOROUGH ON M1C2M5

Between: AAQIB JIFFREY Landlord

And

ZABIE AZIZY Tenant

AAQIB JIFFREY (the 'Landlord') applied for an order to terminate the tenancy and evict ZABIE AZIZY (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on September 26, 2024.

The Landlord, the Landlords representative, Thirusenthuran Sivapatham, and the Tenant attended the hearing. The Tenant declined the opportunity to speak with TDC on the hearing date.

Determinations:

1. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$3,000.00. It is due on the 5th day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$98.63. This amount is calculated as follows: \$3,000.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The Tenant disputed that they owed the arrears, however, they failed to produce any evidence that they had made any payments that were not accounted for by the Landlord and they were otherwise unable to recall any dates they disputed as being paid in response to the Landlords ledger evidence presented at the hearing.
7. On this basis, and absent any evidence to the contrary, I find that the rent arrears owing to October 4, 2024, are \$24,000.00 as claimed by the Landlord
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

9. The Landlord collected a rent deposit of \$3,000.00 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.
10. Interest on the rent deposit, in the amount of \$94.11 is owing to the Tenant for the period from June 26, 2023 to September 26, 2024.
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 not be unfair to postpone the eviction until November 10, 2024 pursuant to subsection 83(1)(b) of the Act.
12. The Tenant wanted to raise issues pursuant to section 82 of the Act, however, the Tenant failed to comply with the requirements in order to raise their issues. Namely, they did not provide the Landlord or the Board with a list of issues they intended to raise, nor did they provide any documentary evidence in support of their issues or the remedy being sought.
13. As the hearing progressed, the Tenant admitted that they were deliberately withholding rent because of an issue with the air conditioning in the rental unit and that the Landlord was not repairing it. The Tenant felt that they were entitled to withhold rent because the Landlord was in breach of contract for not servicing the air conditioning. I say this to give the parties dispute context, but I make no determination regarding the air conditioning or the breach because there was no advance notice to the Landlord or the Board regarding the dispute.
14. When the Tenant was asked why they had not provided advance notice or evidence, the Tenant explained that they didn't know they had to. However, all the details regarding submitting evidence and raising their own issues is clearly outlined on the notice of hearing. Therefore, I denied the Tenant the opportunity to raise the issue of the air conditioning at the hearing. This does not prevent the Tenant from filing their own application at a date in the future should they feel it is appropriate to do so.
15. The Landlord testified that they are in financial distress and living at their parents' house because they can't afford anything else with the Tenant not paying rent. That the mortgage for the rental property is approximately \$5,000.00 and the rent is less than the mortgage payments. The Landlord's employment income is just enough to cover the mortgage and the gas in the vehicle his parents pay for and they are using their credit card for any other necessary expenses.
16. When the Tenant was asked how long they needed to pay the Landlord or to find alternative housing, the Tenant stated that they have all the money to pay the Landlord, however, their intention is to make it hard and difficult for the Landlord to get the money. Shortly thereafter, the Tenant changed their tone to suggest that instead they needed a payment plan.
17. The Tenant testified that the maximum income they make per month is \$4,000.00 plus the child tax benefit of \$1,200.00 they receive for their 2 small children that are ages 7 and 5. The average income is about \$3,500.00.
18. The Tenant went on to explain that their expenses per month are approximately \$2,552.00 including groceries (\$1,700) car insurance and gas (\$600) phone/internet (\$92) and utilities (\$160).

19. When I take the average income (\$4,700) and deduct the expenses including the rent (\$5,552) the Tenant is in a deficit of \$852.00. Even with the maximum income, the Tenant is still in a \$352 deficit. Therefore, I do not find a payment plan is appropriate.
20. Although the Tenant may have issues to dispute the rent arrears, as indicated, they were not properly before me at the Board to consider. Additionally, there is no statutory authority in the Act that stipulates that a tenant can deliberately withhold rent payments because they have a maintenance dispute with the Landlord.
21. If in fact the Tenant is in financial hardship as they suggested, then I find it appropriate to grant some additional time for the Tenant to locate alternative housing on the basis that they have a spouse and 2 small children they are supporting. However, any further relief would be prejudicial for the Landlord based on their financial circumstances.
22. These are all of my reasons and no further reasons shall follow.

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:**
 - \$27,186.00 if the payment is made on or before November 4, 2024. See Schedule 1 for the calculation of the amount owing.

OR

 - \$30,186.00 if the payment is made on or before November 10, 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 November 10, 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 November 10, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$20,261.75. 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 \$98.63 per day for the use of the unit starting September 27, 2024 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 10, 2024, the Tenant will start to owe interest. This will be simple interest calculated from November 11, 2024 at 6.00% annually on the balance outstanding.

8. If the unit is not vacated on or before November 10, 2024, then starting November 11, 2024, 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 11, 2024.

October 16, 2024
Date Issued

Terri van Huisstede

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 11, 2025 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 4, 2024

Rent Owing To November 4, 2024	\$27,000.00
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
Total the Tenant must pay to continue the tenancy	\$27,186.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before November 10, 2024

Rent Owing To December 4, 2024	\$30,000.00
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
Total the Tenant must pay to continue the tenancy	\$30,186.00

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

Rent Owing To Hearing Date	\$23,169.86
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	- \$3,000.00
Less the amount of the interest on the last month's rent deposit	- \$94.11
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	- \$0.00
Total amount owing to the Landlord	\$20,261.75
Plus daily compensation owing for each day of occupation starting September 27, 2024	\$98.63 (per day)