



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

Citation: Jalali v Niyimbona, 2024 ONLTB 83266

Date: 2024-11-13

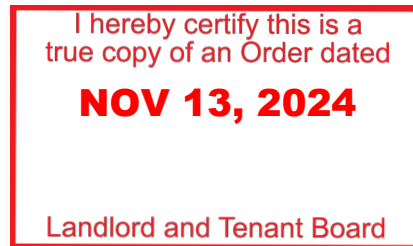
File Number: LTB-L-072512-24

In the matter of: 1090 GEORGETON PVT
OTTAWA ON K1K2W7

Between: Mustafa Jalali
Shehnaaz Merali

And

Claudia Niyimbona



Landlords

Tenant

Mustafa Jalali and Shehnaaz Merali (the 'Landlords') applied for an order to terminate the tenancy and evict Claudia Niyimbona (the 'Tenant') and for an order to have the Tenant pay the rent they owe because the Tenant failed to meet a condition specified in the order issued by the Board on July 22, 2024, with respect to application LTB-L-024291-24.

A hearing was held by videoconference on October 30, 2024 to consider this application. The Landlords, the Landlords' representative, Peter Balatidis, and the Tenant attended the hearing. The Tenant received the services of Tenant Duty Counsel before the hearing.

Determinations:

1. The order provides that the Landlord can apply to the LTB under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenant to terminate the tenancy and evict the Tenant if the Tenant does not meet certain conditions in the order.
2. Both parties agreed that Claudia Niyimbona is the only Tenant of the unit.

The Breach

3. I find that the Tenant did not pay the rent of \$2,203.75 on or before September 1, 2024, as required in order LTB-L-024291-24 issued by the Board on July 22, 2024.
4. The application was filed on September 6, 2024, within 30 days of the breach.

Arrears Owing

5. The previous application includes a request for an order for the payment of arrears of rent and the order requires the Tenant 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.

6. The Tenant was ordered to pay \$11,204.75 for rent arrears to July 31, 2024 and the application filing fee in the previous order. The amount that is still owing from that order is \$10,204.75 and that amount is included in this order. This order replaces order LTB-L-024291-24.
7. Since the date of the previous order, the Tenant has failed to pay rent of \$4,406.25 that became owing for the period from August 1, 2024 to October 31, 2024.
8. The rent arrears and application fee owing to October 31, 2024 are \$14,611.00. Both parties agreed that the Tenant owed this amount to the Landlords.

The Rent Deposit

9. The Landlords collected a rent deposit of \$2,150.00 from the Tenant and this deposit is still being held by the Landlords.
10. Interest on the rent deposit of \$126.67 is owing to the Tenant for the period from December 16, 2021 to October 30, 2024 (the day of the hearing).
11. The amount of the rent deposit and interest on the rent deposit are applied to the amount the Tenant is required to pay.

Daily Compensation

12. The Landlords are entitled to daily compensation from starting October 31, 2024 until the date the Tenant moves out of the unit at a daily rate of \$72.45. This amount is calculated as follows: \$2,203.75 x 12 months, divided by 365 days.

Tenancy Issues

13. The Tenant testified that the Landlords keep increasing the rent and often enter her unit without notification. The Tenant testified that she did not provide the Landlords or the Board with any notice that she intended to raise these tenancy issues at the hearing, and advised that she did not realize she had to provide the Landlords and the Board with advance notice that she intended to raise these issues at the hearing.
14. I find that the Tenant did not provide at least 7 days of advance notice to the Landlords and to the Board that she would be raising tenancy issues at the hearing - as required pursuant to s. 82(2) of the Act and the Board's Rule of Procedure 19.4. The Tenant's lack of awareness of this requirement is not a satisfactory explanation for her failure to comply. For these reasons, I find that the Tenant did not comply with s. 82(1) of the Act, and therefore, the Tenant's request to consider her tenancy issues at the hearing is denied.

Section 83 Considerations

15. The Tenant testified that she stopped working in November 2023 as a result of maternity leave, and she is still not working as of the day of this hearing. She noted that her only income since November 2023 has been \$1,000.00 monthly from child care benefits, and with monthly expenses of \$3,000.00, she has been unable to pay her rent or any rent arrears. The Tenant asserted that she plans to get a job in November 2024 and anticipates that her monthly employment income will be approximately \$4,000.00. The Tenant explained that with this new job, and the monthly child care benefits, she will be able to make monthly arrears payments, in addition to paying for the monthly rent.
16. The Landlords' representative submitted that the Landlords are experiencing financial hardship as a result of the high amount of rent arrears, and the Tenant's failure to pay on-going monthly rent.
17. 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.
18. On the basis of the evidence provided, I am satisfied that the Tenant has accrued significant rent arrears of \$14,611.00 that would require 15 months for the Tenant to repay at a payment rate of \$1,000.00 monthly, as order in LTB-L-024291-24. I find that implementing this lengthy period of payment, even if financially viable for the Tenant, would be unfair to the Landlord. Furthermore, I find that without any confirmed employment, and a monthly income of only \$1,000.00, the Tenant is currently unable to make meaningful payments towards the arrears, or to pay for her on-going rent. I am therefore satisfied that this tenancy is not financially viable for the Tenant, and any continuation of this tenancy would be prejudicial to the Landlords. For these reasons, I find that offering the Tenant conditional eviction relief through another payment plan, or postponing the termination of the tenancy, would result in continued undue financial hardship for the Landlords. Accordingly, I find that it would be unfair to the Landlords to grant the Tenant with any eviction relief.

It is ordered that:

1. Order LTB-L-024291-24 is cancelled.
2. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before November 24, 2024.
3. If the unit is not vacated on or before November 24, 2024, then starting November 25, 2024, the Landlords 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 Landlords on or after November 25, 2024.

5. The Tenant shall pay to the Landlords \$12,304.08*. This amount represents the rent owing up to October 30, 2024 and the cost of filing the previous application, less the rent deposit and interest the Landlords owe on the rent deposit.
6. The Tenant shall also pay to the Landlords \$72.45 per day for compensation for the use of the unit starting October 31, 2024 to 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 November 24, 2024, the Tenant will start to owe interest. This will be simple interest calculated from November 25, 2024 at 6.00% annually on the balance outstanding.

November 13, 2024
Date Issued

Frank Ebner
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 of the Tenant expires on May 25, 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.

* Refer to the attached Summary of Calculations Table.

SUMMARY OF CALCULATIONS TABLE

Amount the Tenant must pay the Landlords:

Reason for amount owing	Period	Amount
Amount of arrears owing from previous order	Up to July 31, 2024	\$10,204.75
New Arrears	From August 1, 2024 to October 30 , 2024 (the day of the hearing)	\$4,376.00
Less the rent deposit:		-\$2,150.00
Less the interest owing on the rent deposit	December 16, 2021 to October 30, 2024	-\$126.67
Plus daily compensation owing for each day of occupation starting October 31, 2024		\$72.45 (per day)

Total the Tenant must pay the Landlords:	\$12,304.08 + \$72.45 per day starting October 31, 2024
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