



Order under Section 69 Residential Tenancies Act, 2006

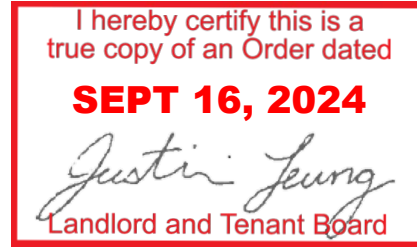
File Number: LTB-L-023491-24

In the matter of: 4311, 161 ROEHAMPTON AVE
TORONTO ON M4P0C8

Between: Oluyemisi Olukoya

And

Ardeshir Soltani



Landlord

Tenant

Oluyemisi Olukoya (the 'Landlord') applied for an order to terminate the tenancy and evict Ardeshir Soltani (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on August 12, 2024.

The Landlord, Landlord's Legal Representative, Tigran Sandukhchyan, the Tenant and the Tenant's Legal Representative, Babak Karimkhani, attended the hearing.

Preliminary Matter:

Tenant Adjournment Request Denied

1. The Tenant's Legal Representative had requested an adjournment as the Tenant accompanied his wife to the hospital for medical treatment. In addition, the Tenant had only recently retained legal representation and their representative wanted additional time to review the application. The Landlord's Legal Representative did not support an adjournment and stated that it was the Tenant's wife who needed medical treatment, and not the Tenant. They further indicated that the Tenant should have had sufficient time prior to the hearing to obtain legal representation. Based on this, and in consideration of Rule 21, I did not grant the adjournment. It is noted that the Notice of Hearing (NOH) had been sent to the parties in April 2024. As such, the parties have had approximately 4 months to prepare for this hearing, including obtaining legal representation. In terms of the Tenant's wife requiring medical treatment, this was not described as a medical emergency but part of regular treatment. As such, the Tenant should have been able to previously plan to attend this hearing, or request accommodation or rescheduling to the Board prior to the hearing. I then requested the Tenant to join the hearing which they did. We then proceeded to the merits hearing of the application.

Substantial Compliance of N4 notice

2. The Tenant stated that their name is 'Ardeshir Soltani' and not 'Ardshi Soltan' as shown on the N4 notice of termination. The Tenant asked if this would affect the validity of the N4 notice. The Landlord accepted that they may have spelt the Tenant's name incorrectly on

the N4 notice and in the tenancy agreement. Section 212 of the *Residential Tenancies Act, 2006* (the 'Act') outlines provisions on substantial compliance with the Act:

212 Substantial compliance with this Act respecting the contents of forms, notices or documents is sufficient. 2006, c. 17, s. 212.

Based on this, I find the Tenant's name on the N4 notice is substantially similar to the Tenant's actual name and do not believe the Tenant, when reviewing the N4 notice in its totality, would not understand it was served and addressed to them.

Start of Rental Period Determined to be Correct on N4 notice

3. The Tenant referred to the N4 notice which on the 2nd page shows rent owing for the February 1, 2024 to February 29, 2024 and March 1, 2024 to March 31, 2024 rental periods, indicating rent is to be paid the 1st of the month. The Tenant referenced the tenancy agreement which indicated rent is to be paid the 28th of the month. The Tenant asserts that this would result in the N4 notice being invalid.
4. The Landlord testified that the tenancy agreement had been executed during COVID-19 pandemic which resulted in them identifying rent to be paid for the 28th of the month due to extenuating circumstances. They assert that the Tenant has consistently paid the rent the 1st of the month throughout the tenancy. The Landlord provided post hearing submissions which show a series of rent payments by the Tenant from July 2020 until the hearing date which appear to show majority payments made either on the 1st of the month or close to the 1st of the month. The Tenant did not provide any responding evidence in relation to this.
5. Based on the consistent pattern of behaviour of the Tenant paying rent on the 1st of the month instead of the 28th, and based upon there being no objection by the Landlord during the tenancy to this behaviour (such as serving an N8 for persistently late rent payment, or sending an email or letter to the Tenant advising rent is supposed to be paid by the 28th), I find that the parties both implied and agreed to change the rent due date to the 1st of the month. The RTA defines tenancy agreements in section 2 to include implied agreements. Even though the Tenant provided a copy of a written rental agreement showing rent was due on the 28th the RTA requires me in section 202, to ascertain the real substance of all transactions and activities relating to a rental unit and the good faith of the participants in doing so. The evidence of the parties' points to there being a mutual agreement in place based on their implied behaviour over time, that the rental due date is the 1st of the month. As such, I further determine that the rental periods as identified on the N4 notice to be valid.

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 \$2,900.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$95.34. This amount is calculated as follows: $\$2,900.00 \times 12$, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to August 31, 2024 are \$20,300.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$2,050.00 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.
9. Interest on the rent deposit, in the amount of \$133.56 is owing to the Tenant for the period from June 28, 2020 to August 12, 2024.
10. 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 October 16, 2024 pursuant to subsection 83(1)(b) of the Act. The Landlord's Legal Representative had requested a standard 11 day order attributing this to significant rent arrears which could accumulate if there were a postponed eviction. The Tenant's Legal Representative submitted that the Board should assess the Tenant's personal situation and consider some relief for them. It was noted that the Tenant has lived in the unit for approximately 4 years and that their spouse has medical issues, which they indicate requires the Tenant to devote additional time to meet their spouse's needs. Based on this, I find that postponing eviction by one month to October 16, 2024 would be appropriate in the circumstances, recognizing the length of the tenancy and the Tenant's wife's medical condition to provide them additional time to seek new accommodations.

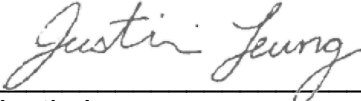
It is ordered that:

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:**
 - \$23,386.00 if the payment is made on or before September 30, 2024. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$26,286.00 if the payment is made on or before October 16, 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 October 16, 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 October 16, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$16,546.52. 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 \$95.34 per day for the use of the unit starting August 13, 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 October 16, 2024, the Tenant will start to owe interest. This will be simple interest calculated from October 17, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before October 16, 2024, then starting October 17, 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 October 17, 2024.

September 16, 2024
Date Issued



Justin Leung
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 April 17, 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 September 30, 2024

Rent Owing To September 30, 2024	\$23,200.00
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
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
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 the Tenant must pay to continue the tenancy	\$23,386.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before October 16, 2024

Rent Owing To October 31, 2024	\$26,100.00
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
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
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 the Tenant must pay to continue the tenancy	\$26,286.00

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

Rent Owing To Hearing Date	\$18,544.08
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	- \$2,050.00
Less the amount of the interest on the last month's rent deposit	- \$133.56
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	\$16,546.52
Plus daily compensation owing for each day of occupation starting August 13, 2024	\$95.34 (per day)