



Order under Section 69 Residential Tenancies Act, 2006

Citation: Sayani v Ud din, 2023 ONLTB 28737

Date: 2023-04-07

File Number: LTB-L-059669-22 / LTB-T-057344-22

In the matter of: 1506, 797 DON MILLS RD
NORTH YORK ON M3C1V1

Between: Shagufta Sayani
Sohail Sayani

And

Moeen Ud din

I hereby certify this is a
true copy of an Order dated

Apr. 6, 2023

Landlord and Tenant Board

Landlords

Tenant

Shagufta Sayani and Sohail Sayani (the 'Landlord') applied for an order to terminate the tenancy and evict Moeen Ud din (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 Application) .

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Tenant has persistently failed to pay the rent on the required date (L2 Application).

Moeen Ud din (the 'Tenant') applied for an order determining that Shagufta Sayani and Sohail Sayani (the 'Landlords'), entered the unit illegally, altered the locking system on a door giving entry to the rental unit or residential complex without giving them replacement keys and substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household (T2 Application).

This application was heard by videoconference on March 23, 2023. The Landlords, the Landlord's Legal Representative, A. Ostermeier, and the Tenant attended the hearing.

Preliminary Issue:

The Tenant stated that he requested the assistance of an interpreter from the Board and submitted a form via email on February 17, 2023 or February 20, 2023. I was unable to locate the email or form in the file and there was no interpreter at the hearing. As I could understand the Tenant clearly, I found it fair to proceed with the hearing of the application.

The Tenant was informed that he could ask us to repeat our sentences at anytime if he found it necessary. During the entire proceeding, the Tenant spoke clearly and had no apparent issues with language.

The Tenant raised issues pursuant to section 82 of the Act and uploaded a copy of his application LTB-T-057344-22, which was heard with the Landlord's application.

Determinations:

L2 Application

1. On September 13, 2022, the Landlords served the Tenant with a Notice to End your Tenancy at the End of the Term with a termination date of November 14, 2022. The Landlords alleged in the notice that the Tenant pays the monthly rent late.
2. The rent is due on the 15th day of each month. From October 2021 to August 2022, the Tenant on 6 occasions failed to pay the rent in full on the 15th day of the month. The Tenant has not paid any rent since the service of the notice of termination.
3. The Tenant stated that he needed to check his bank records to confirm whether he paid the rent late.
4. I find that the Tenant has persistently failed to pay the rent on the date it was due.

L1 Application

5. 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.
6. As of the hearing date, the Tenant was in possession of the rental unit.
7. The lawful rent is \$1,795.00.
8. Based on the Monthly rent, the daily rent/compensation is \$59.01. This amount is calculated as follows: \$1,795.00 x 12, divided by 365 days.
9. The Tenant has not made any payments since the application was filed.
10. The Landlord's attempts at negotiating a repayment agreement were unsuccessful despite reducing the rent from \$1,995.00 to \$1,795.00.
11. The rent arrears owing to April 14, 2023 are \$23,335.00.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

T2 Application / Section 82 Issues

13. The Tenant raised several issues pursuant to section 82 of the Act and in his application:
 - a. Bedbugs:

The Tenant alleged that there were bedbugs in the unit in March 2022. The Landlord was informed and he attended the unit to spray it, but the issue was not resolved until August 2022 when the Tenant hired professionals to deal with the issue. The Tenant did not provide any receipts to substantiate his claim but provided a picture of a dark object on the baseboard.

The Landlord stated that they inspected the unit in March 2022, found no evidence of a bedbug infestation but decided to treat the unit with a spray. They provided a receipt showing the spray was purchased in March 2022.

Section 20 (1) of the Residential Tenancies Act, 2006 ("Act"), provides that a Landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards. In this case, the Tenant has failed to demonstrate that the Landlords neglected their responsibilities as the picture presented showed a black speck on the baseboard and there were no receipts to demonstrate that the Tenant hired a pest control company.

b. Internet

The Tenant alleged the internet, which was included in the rent, was so poor he had to obtain his own coverage in February 2021. He provided text messages he sent to the Landlord on December 3, 2020 and January 25, 2021 where he complained that the internet was bad.

The Landlord provided evidence demonstrating that the Tenant was connected to the internet on February 9 and 11, 2021 and the connection was good.

The Tenant did not provide any receipts to show that he had to obtain additional internet coverage and was in fact connected to the Landlord's network in February 2021.

c. Illegal Entry

The Tenant testified that on September 17, 2021, the Property Manager attended the unit without notice, informed him he was there for an inspection and was aggressive when asked why he was there. He promised to visit the next day and when the Tenant was not home, he called to ask about his whereabouts. He called the Tenant names, mocked his English and family status, and asked him to return to his country. The Tenant did not report this incident to the Landlord.

The Landlord provided notices of entry served on the Tenants for entry on September 11, 2022 and September 18, 2022 and denied any knowledge of the Tenant's interactions with the Property Manager or a visit to the unit on September 17, 2022.

The Tenant's failure to report the offensive comments by the Property Manager, if at all they were made, rendered it impossible for the Landlord to address the issue.

d. Report to Employer

The Tenant provided an email from the Property Manager dated September 19, 2022 in which he threatened to report the Tenant's non-payment of rent to the Tenant's employer and other agencies. The Tenant claimed his job was terminated on October 17, 2022, and he provided a portion of the letter of termination as evidence.

The Landlord provided an email from the Property Manager dated March 16, 2023 in which the Property Manager denied contacting the Tenant's employer when asked if he did so.

Based on all the evidence, the Tenant was unable to demonstrate that the Property Manager contacted his employer and his employment was terminated as a result. More importantly, this incident did not take place in the residential complex.

e. Credit Report

The Tenant provided a credit report which showed that he owed rent to the Landlord. He stated that he did not authorize the Landlord to contact the credit agency.

The Landlord stated that he hired a company to manage his property and the credit reporting is part of the services they offer.

This incident did not occur in the residential complex.

f. Noise Disturbances

The Tenant stated that the Landlord's condo unit is close to the rental unit and on January 30, 2021, he sent a text message to the Landlord about a noise disturbance he heard for a second time. There were no further noise disturbances after that date.

g. Curtains

The Tenant stated that he was served with an N5 notice of termination in August 2022, for damage to curtains in the unit. In response, he sent the Landlord a previous text from March 31, 2022 when he complained about the state of the curtains.

The Landlord took no further actions against the Tenant once the Tenant's original complaint was brought to their recollection.

14. The Tenant is not entitled to a rent abatement for any of his complaints and the T2 application will be dismissed.
15. The Landlord collected a rent deposit of \$1,995.00 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.
16. Interest on the rent deposit, in the amount of \$37.47 is owing to the Tenant for the period from December 15, 2020 to March 23, 2023.

Relief from Eviction

17. The Landlords stated that they are facing financial hardship and have received letters about a lien being placed on the property because they are unable to keep up with the payments without the rental income.

18. The Tenant who has resided in the unit since December 2020, testified that it was not clear how much rent he needed to pay hence even though he earned \$7,000.00 monthly since December 2022, he has not made a payment to the Landlord.
19. The Tenant requested relief from eviction and offered to pay \$1,795.00 in arrears in addition to the rent every month. This request was denied because the Tenant, who has not paid any rent since the application was filed, is unlikely to pay twice the rent amount if a conditional order is issued.
20. I have considered all 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 Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The amount outstanding is substantial, and the Tenant has not paid any rent since March 2022.

It is ordered that:

L1 Application

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:**
 - \$23,521.00 if the payment is made on or before April 14, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$25,316.00 if the payment is made on or before April 17, 2023. 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 April 17, 2023 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 April 17, 2023**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$20,224.62. 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 \$59.01 per day for the use of the unit starting March 24, 2023 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 April 17, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 18, 2023 at 5.00% annually on the balance outstanding.
8. If the unit is not vacated on or before April 17, 2023, then starting April 18, 2023, 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 April 18, 2023.

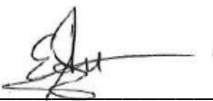
L2 Application

10. If the Tenant voids the L1 portion of this order in accordance with paragraph 2 above, the tenancy shall continue on the condition that, the Tenant shall pay the Landlords the rent for the months of May 2023 to April 2024, in full, and on the 15th day of each corresponding month.
11. If the Tenant fails to make any of the payments in accordance with paragraph 10, and by the dates required, then the Landlords may apply under section 78 of the Act for an order terminating the tenancy and evicting the Tenant. The Landlords must make the application within 30 days of a breach of a condition set out in paragraph 10 of this order.

T2 Application

12. The Tenant's application is dismissed.

April 6, 2023
Date Issued



Jitewa Edu
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 October 19, 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before April 14, 2023

Rent Owing To April 14, 2023	\$23,335.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$23,521.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before April 17, 2023

Rent Owing To May 14, 2023	\$25,130.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$25,316.00

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

Rent Owing To Hearing Date	\$22,071.09
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$1,995.00
Less the amount of the interest on the last month's rent deposit	- \$37.47
Total amount owing to the Landlord	\$20,224.62
Plus daily compensation owing for each day of occupation starting March 24, 2023	\$59.01 (per day)