



Order under Section 69 Residential Tenancies Act, 2006

Citation: Ferouzi v Wilkinson, 2024 ONLTB 4564

Date: 2024-02-20

File Number: LTB-L-048323-23

In the matter of: 687 HIGH GATE PARK DR
Kingston ON K7M5Z7

Between: Arian Ferouzi

And

Britteny Wilkinson, Tim Lemmon, Emily
Wilkinson and Bailey Wilkinson

I hereby certify this is a
true copy of an Order dated
FEB 20, 2024
Landlord and Tenant Board

Landlord

Tenants

Arian Ferouzi (the 'Landlord') applied for an order to terminate the tenancy and evict Britteny Wilkinson, Tim Lemmon, Emily Wilkinson and Bailey Wilkinson (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on November 7, 2023.

Only the Landlord and the Landlord's Legal Representative, Mark Grossman, attended the hearing.

As of 9:43 AM, 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.

At the hearing I raised a preliminary issue regarding the date on which the application was filed, and whether the application complies with the *Residential Tenancies Act, 2006* (the 'Act') in this regard. The Landlord's Representative submitted to the Board that the Board Member has the discretion to allow an application, even if it does not meet the criteria as stated in the Act. The Landlord's Representative also submitted that dismissing the application would cause prejudice to the Landlord as the balance owing is substantial and causing financial burden on the Landlord. The representative submitted that allowing the application would cause no prejudice to the Tenants as they were served all the documents accordingly and were aware of the amount of arrears they owe.

The Tenants did not attend the hearing, and thus did not provide any evidence that may be relevant to my determination of the preliminary matter.

The Landlord gave the Tenants an N4 Notice of Termination under section 59 of the Act.

Subsection 74(1) of the Act provides clarification as to when a landlord can file an application based on an N4 Notice of Termination for arrears of rent. It states:

74 (1) A landlord may not apply to the Board under section 69 for an order terminating a tenancy and evicting the tenant based on a notice of termination under section 59 before the day following the termination date specified in the notice. 2006, c. 17, s. 74 (1).

In the matter before the Board, the application was filed the same day as the termination date in the Notice of Termination (June 19, 2023). Following submissions, the Landlord still sought to proceed with the application. Accordingly, I considered the application but find it appropriate to issue an order for arrears only and no eviction since the Landlord did not comply with the filing requirement in section 74(1) of the Act.


Determinations:

1. The Landlord served the Tenants with a 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 \$2,500.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$82.19. This amount is calculated as follows: \$2,500.00 x 12, divided by 365 days.
5. The Tenants has paid \$1,100.00 to the Landlord since the application was filed.
6. The rent arrears owing to November 30, 2023, are \$17,800.00.
7. The Landlord is entitled to \$60.00 to reimburse the Landlord for administration charges the Landlord incurred as a result of 3 cheques given by or on behalf of the Tenants which were returned NSF.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. There is no last month's rent deposit.
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 grant relief from eviction pursuant to subsection 83(1)(a) of the Act.

It is ordered that:

1. The Tenants must pay to the Landlord or to the LTB in trust \$16,946.00, which includes the arrears of rent up to November 30, 2023, \$60 for NSF cheques, and the cost of filing the application, on or before March 2, 2024. See Schedule 1 for the calculations of the amount owing.
2. If the Tenants do not pay the Landlord the full amount owing on or before March 2, 2024, the Tenants will start to owe interest. This will be simple interest calculated from March 3, 2024, at 7.00% annually on the balance outstanding.

February 20, 2024
Date Issued



Kevin O'Brien
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.

Schedule 1
SUMMARY OF CALCULATIONS

A. Amount the Tenant must pay on or before March 2, 2024

Rent Owing To November 30, 2023	\$17,800.00
Application Filing Fee	\$186.00
NSF Charges	\$60.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,100.00
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	\$16,946.00