



Order under Section 69 Residential Tenancies Act, 2006

Citation: O'Neill v Kearns, 2023 ONLTB 28213

Date: 2023-06-29

File Number: LTB-L-049092-22

In the matter of: #1, 100 BALSAM AVE S
HAMILTON ON L8M3B3

Between: Gerald O'Neill

And

Wayne Kearns

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

JUN 29, 2023

Landlord and Tenant Board

Landlord

Tenant

Gerald O'Neill (the 'Landlord') applied for an order to terminate the tenancy and evict Wayne Kearns (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 15, 2023.

Only the Landlord and his representative, Bryan Rubin, attended the hearing.

As of 9:30 a.m., the Tenant was not present or represented at the hearing although properly served with notice of hearing by the Board. There is no record of a request to reschedule. As a result, the hearing proceeded with only the Landlord's evidence.

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 increased to \$932.53 effective January 1, 2023. It is due on the 1st day of each month.
4. Based on the monthly rent, the daily rent/compensation is \$30.66. This amount is calculated as follows: \$932.53 x 12, divided by 365 days.
5. The Tenant paid \$2,500.00 to the Landlord after the application was filed.
6. The rent arrears owing to June 30, 2023 are \$8,453.92.
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 \$840.00 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 \$170.27 is owing to the Tenant for the period from October 1, 2011 to June 15, 2023.
10. I have considered all of 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. The Landlord has offered to negotiate a repayment plan but received no response. The Tenant has been in arrears of rent for a year and the arrears simply keep growing. Given all of the circumstances here I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act beyond the standard eleven day opportunity to void and stay.

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:**
 - \$8,639.92 if the payment is made on or before June 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$9,572.45 if the payment is made on or before July 10, 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 July 10, 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 July 10, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$7,157.02. 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 \$30.66 per day for the use of the unit starting June 16, 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 July 10, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 11, 2023 at 6.00% annually on the balance outstanding.

8. If the unit is not vacated on or before July 10, 2023, then starting July 11, 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 July 11, 2023.

June 29, 2023
Date Issued



Ruth Carey
Vice Chair, 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 January 11, 2024 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 June 30, 2023

Rent Owing To June 30, 2023	\$10,953.92
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,500.00
Total the Tenant must pay to continue the tenancy	\$8,639.92

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before July 10, 2023

Rent Owing To July 31, 2023	\$11,886.45
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,500.00
Total the Tenant must pay to continue the tenancy	\$9,572.45

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

Rent Owing To Hearing Date	\$10,481.29
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,500.00
Less the amount of the last month's rent deposit	- \$840.00
Less the amount of the interest on the last month's rent deposit	- \$170.27
Total amount owing to the Landlord	\$7,157.02
Plus daily compensation owing for each day of occupation starting June 16, 2023	\$30.66 (per day)