



OCT 16, 2023

**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Tenaglia v Burns, 2023 ONLTB 67832

Date: 2023-10-16

File Number: LTB-L-036922-23

In the matter of: 11, 2130 SHIRLEY RD
PORT PERRY ON L9L1B3

Between: Anthony Tenaglia, Dino Tenaglia, Enza
Catenacci, Robert Catenacci and Claudio
Catenacci

Landlords

And

Stacey Burns

Tenant

Anthony Tenaglia, Dino Tenaglia, Enza Catenacci, Robert Catenacci and Claudio Catenacci (the 'Landlords') applied for an order to terminate the tenancy and evict Stacey Burns (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on September 25, 2023.

The Landlords, Anthony Tenaglia and Robert Catenacci, the Landlord's Representative, Lisa Barder, and the Tenant attended the hearing.

Determinations:

Preliminary Issue: Adjournment Request

1. At the onset of the hearing, the Tenant requested an adjournment to raise her own issues.
2. The Tenant submitted that there were ongoing issues regarding maintenance in the unit and tenant rights. The Tenant did not provide the Landlord or the Board with details about the issues and the supporting evidence at least 7 days before the hearing as required by section 82(2) of the *Residential Tenancies Act, 2006* ("Act") and LTB Rule of Procedure 19.4. Therefore, I did not permit the Tenant to raise the issues under section 82 of the Act. The Tenant is able to file her own tenant application(s).
3. Given that the Tenant was served by the Board in May 2023 with the notice of hearing, I find that the Tenant had ample opportunity to provide her evidence and submissions under section 82 prior to the hearing. The arrears are substantial and granting the adjournment would prejudice the Landlord as the amount will increase beyond the monetary jurisdiction of the Board. As such, the Tenant's adjournment request was denied.

Arrears

4. 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.
5. As of the hearing date, the Tenant was still in possession of the rental unit.
6. The lawful rent is \$5,125.00. It is due on the 1st day of each month.
7. Based on the Monthly rent, the daily rent/compensation is \$168.49. This amount is calculated as follows: \$5,125.00 x 12, divided by 365 days.
8. The Tenant has not made any payments since the application was filed.
9. The rent arrears owing to September 30, 2023 are \$35,875.00.
10. The amount of money the Tenant must pay to continue the tenancy, as set out in paragraph two below, exceeds \$35,000.00. While the Board's monetary jurisdiction is \$35,000.00, the Divisional Court recently confirmed in *Galaxy Real Estate Core Ontario LP v. Kirpichova et al.*, 2023 ONSC 4356, that the pursuant to section 74(3)(a) of the *Residential Tenancies Act, 2006* ("Act"), the LTB should set out the full amount of rent arrears owing. Therefore, the amount of money the Tenant must pay to continue the tenancy is not subject to the Board's monetary jurisdiction.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$5,000.00 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.
13. Interest on the rent deposit, in the amount of \$190.48 is owing to the Tenant for the period from September 10, 2020 to September 25, 2023.

Section 83 Considerations

14. 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 and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
15. The Tenant seeks an opportunity to preserve the tenancy and proposes paying the new rent that comes due and \$1,000.00 each month towards the arrears starting December 2023 until the arrears are paid up.
16. The Tenant testified that she used the rental unit as part of her business and her business was shut down by the City a year ago.
17. The Tenant testified that her four children live with her. They are 24, 22, 22, and 14 years old. Her two grandchildren, who are 2 years old and 7 months old, also reside in the unit.
18. The Tenant submits that between her and her son, the household income is approximately \$8,000.00 to \$9,000.00. The Tenant testified that she attempted to pay the Landlords, but

payment was refused as the parties were in discussions for compensation and the possibility of her moving. The Tenant did not save the funds and utilized the funds for other purposes.

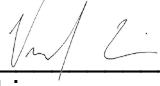
19. The Landlord's Representative seeks a termination of the tenancy and submits that the Tenant improperly withheld rent and that any further delays would prejudice the Landlords as the Landlords would not be able to recover the arrears in excess of the Board's monetary jurisdiction. The Landlords depend on the rent for revenue and to pay for the property's expenses.
20. The arrears are substantial. Despite a consistent income, the Tenant has not made any good faith payments to the Landlords. While the Tenant claimed she is actively looking for employment and will pay the Landlords more if her income increase, her hopes for employment and regular income seemed like mere speculation. As a result, having considered all the circumstances of both parties, I find that a standard eviction order would be fair in the circumstances.

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:**
 - \$41,186.00 if the payment is made on or before October 27, 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 October 27, 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 October 27, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$29,957.77. 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 \$168.49 per day for the use of the unit starting September 26, 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 October 27, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 28, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before October 27, 2023, then starting October 28, 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 October 28, 2023.

October 16, 2023
Date Issued



Vicky Liu
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 28, 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 October 27, 2023

Rent Owing To October 31, 2023	\$41,000.00
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	\$41,186.00

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

Rent Owing To Hearing Date	\$34,962.25
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	- \$5,000.00
Less the amount of the interest on the last month's rent deposit	- \$190.48
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	\$29,957.77
Plus daily compensation owing for each day of occupation starting September 26, 2023	\$168.49 (per day)