



Order under Section 69 Residential Tenancies Act, 2006

Citation: Rana v Burger, 2024 ONLTB 200

Date: 2024-01-17

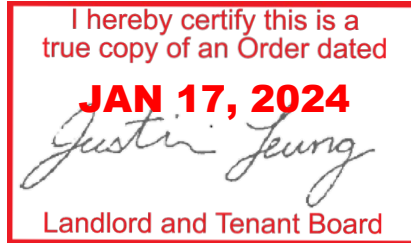
File Number: LTB-L-053755-23

In the matter of: 29 ROCKWOOD AVE
ST CATHARINES ON L2P1E6

Between: Ajay Rana

And

David Burger and Carolyn Liddiard



Landlord

Tenants

Ajay Rana (the 'Landlord') applied for an order to terminate the tenancy and evict David Burger and Carolyn Liddiard (the 'Tenants') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on December 4, 2023.

Only the Landlord attended the hearing.

As of 11:20 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.

Determinations:

Preliminary Matter:

1. The Certificate of Service (COS) for the N4 notice indicates that the notice had been posted on the Tenant's door and then the Landlord took a picture and sent it to the Tenants.

Section 191(1) of the Residential Tenancies Act (the 'Act') and Rule of Practice 3.1 outline the various accepted methods of service by the Board; taping a notice on the door is not one of them. Section 191(2) states:

191 (2) A notice or document that is not given in accordance with this section shall be deemed to have been validly given if it is proven that its contents actually came to the attention of the person for whom it was intended within the required time period.

2. The Landlord provided text messages received after posting the notice to the door, with the Tenants communicating to the Landlord that they would make payments relating to their rent arrears.

3. The Landlord's evidence supports the position that Tenants were aware of the N4 notice of termination. Therefore, I find that the N4 notice of termination came to the attention of the Tenants within the required time period, even if it was taped to the door. As such, I find that the N4 notice of termination is deemed validly given pursuant to s. 191 (2) of the Act.

L1 Application:

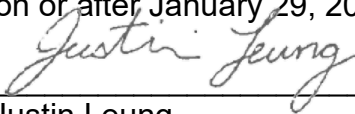
4. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
5. As of the hearing date, the Tenants were still in possession of the rental unit.
6. The lawful rent is \$1,950.00. It is due on the 1st day of each month.
7. Based on the Monthly rent, the daily rent/compensation is \$64.11. This amount is calculated as follows: \$1,950.00 x 12, divided by 365 days.
8. The Tenants have paid \$2,290.00 to the Landlord since the application was filed.
9. The rent arrears owing to December 31, 2023 are \$10,510.00.
10. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. There is no last month's rent deposit.
12. I have considered all of the disclosed circumstances in accordance with subsection 83 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 Tenants, and find that the Landlord did attempt to negotiate repayment of the arrears of rent. In making this finding I considered the Landlord's submissions that several attempts were made to have the Tenants pay with installments and to accommodate them as they occasionally had travel for work, but that was not tenable as the Tenants have made payments of smaller amounts while the arrears of amount has increased significantly.
13. The Tenants did not attend and thus I did not have an opportunity to hear from them regarding any circumstances that might be relevant under subsection 83(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants voids this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$12,646.00 if the payment is made on or before January 28, 2024. See Schedule 1 for the calculation of the amount owing.

3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after January 28, 2024 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before January 28, 2024**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$9,002.44. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$64.11 per day for the use of the unit starting December 5, 2023 until the date the Tenant moves out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before January 28, 2024, the Tenants will start to owe interest. This will be simple interest calculated from January 29, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before January 28, 2024, then starting January 29, 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 January 29, 2024.

January 17, 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 July 29, 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before January 21, 2024

Rent Owing To January 31, 2024	\$14,750.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$2,290.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$12,646.00

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

Rent Owing To Hearing Date	\$11,106.44
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$2,290.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total amount owing to the Landlord	\$9,002.44
Plus daily compensation owing for each day of occupation starting December 5, 2023	\$64.11 (per day)