



Order under Section 69 Residential Tenancies Act, 2006

Citation: Khan v Ottaviano, 2024 ONLTB 9367

Date: 2024-02-02

File Number: LTB-L-080579-23

In the matter of: 123 VANHORNE CLOSE
BRAMPTON ON L7A4E9

Between: Ali Uz Zaman Khan

And

Laurie Ottaviano and Taylor Nicole Webb

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

Feb 2, 2024

Landlord and Tenant Board

Landlord

Tenants

Ali Uz zaman Khan (the 'Landlord') applied for an order to terminate the tenancy and evict Laurie Ottaviano and Taylor Nicole Webb (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on January 25, 2024.

The Landlord, the Landlord's support Wasi Khan and the Tenants attended the hearing.

Determinations:

1. 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.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$2,640.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$86.79. This amount is calculated as follows: \$2,640.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to January 31, 2024 are \$14,640.00.
7. The Tenants did not contest the amount of arrears owing to the Landlord.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$2,550.00 from the Tenants 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.

10. Interest on the rent deposit, in the amount of \$100.81 is owing to the Tenants for the period from December 20, 2020 to January 25, 2024.
11. 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.
12. The Landlord sought an eviction order and an order for the arrears of rent. He testified that while he is sympathetic to the Tenants' situation, he is no longer in a financial position to assist them any further. He testified that he has attempted to negotiate a payment plan with the Tenants, but that he did not hear from them to work out any solution. The Landlord tendered a letter sent to the Tenants from his lawyer on September 26, 2023 which states the Landlord is willing to negotiate a repayment agreement with the Tenants.
13. The Tenants sought a delay in the eviction for 90 days so that they can secure new housing. The Tenants did not seek a payment plan to pay off the arrears and preserve the tenancy.
14. The Tenant LO testified that she and her daughter, the Tenant TW have fallen into arrears because TW lost her job in August. She stated the reason that TW lost her job is because LO needed her daughter to care for her full time due to illness. LO testified that she suffered a stroke 3 years ago and that her health deteriorated last August. She stated that she only has use of one leg and that she suffers from serious mental health issues. LO tendered a letter from her doctor about her medical condition. LO stated that her current source of income is a \$1,200.00 per month disability payment. LO further testified that her daughter has been on EI and OW and that she is currently looking for work.
15. I asked the Tenants if they would be able to pay ongoing rent if I were to order a delay in the eviction as they requested. LO testified that she was unable to give a firm date as to when the Tenants would be able to pay rent. She also testified that she texted the Landlord a request for a payment plan, but that he did not respond.
16. LO testified that she and TW have been looking for new accommodations but have not found anything yet. LO tendered a document confirming that she has applied for social housing.
17. Based on all of the circumstances presented to me by the parties, I find that it would be unfair to delay the eviction as the Tenants requested. On the Tenants' own evidence, they are unable to pay ongoing rent and they have not suggested a payment plan. In addition, the arrears are substantial and the Tenants have not made any payments at all since August 2023, even though both Tenants had some income, albeit less income than they had prior to August 2023. While I am sympathetic to their situation, it would be unfair to the Landlord to expect him to forego further rent payments while the Tenants search for a new home.


18. With respect to the LO's testimony with respect to requesting a payment plan by text message, the text message was not entered into evidence. By contrast, the Landlord did submit the letter his lawyer sent to the Tenants stating that the Landlord was open to a payment plan. I am satisfied that the Landlord attempted to negotiate a repayment agreement with the Tenants.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$17,466.00 if the payment is made on or before February 13, 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 has paid the full amount owing as ordered plus any additional rent that became due after February 13, 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 February 13, 2024**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$11,704.94. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$86.79 per day for the use of the unit starting January 26, 2024 until the date the Tenants moves out of the unit.
7. If the Tenants does not pay the Landlord the full amount owing on or before February 13, 2024, the Tenants will start to owe interest. This will be simple interest calculated from February 14, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before February 13, 2024, then starting February 14, 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 February 14, 2024.

February 2, 2024
Date Issued



Angela Long
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 September 1, 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 February 13, 2024

Rent Owing To February 29, 2024	\$17,280.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
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 is entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$17,466.00

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

Rent Owing To Hearing Date	\$14,169.75
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
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	- \$2,550.00
Less the amount of the interest on the last month's rent deposit	- \$100.81
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total amount owing to the Landlord	\$11,704.94
Plus daily compensation owing for each day of occupation starting January 26, 2024	\$86.79 (per day)