



Order under Section 69 Residential Tenancies Act, 2006

Citation: Moodie Apartments v Penagin, 2023 ONLTB 28151

Date: 2023-04-05

File Number: LTB-L-048989-22

In the matter of: 11, 1731 MOODIE ST E
THUNDER BAY ON P7E4Z1

Between: Moodie Apartments Landlord

And

Jeremiah Penagin Tenants Shundel Bergman

Moodie Apartments (the 'Landlord') applied for an order to terminate the tenancy and evict Jeremiah Penagin and Shundel Bergman (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on March 16, 2023. The Landlord's agent, Manuele Mizzi, and the Landlord's representative, Natasha Mizzi, attended the hearing. As of 11:26 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:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment 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 \$1,199.00. It is due on the 1st day of each month.
4. Based on the monthly rent, the daily rent/compensation is \$39.42. This amount is calculated as follows: \$1,199.00 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 March 31, 2023 are \$9,642.00.
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 \$1,199.00 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.
9. Interest on the rent deposit, in the amount of \$26.28 is owing to the Tenants for the period from May 1, 2022 to March 16, 2023.
10. The Landlord's agent testified that when the arrears started he called and emailed the Tenants to discuss payment options. The agent noted that three months later he called the Tenants again, and a month before the hearing he sent a letter to the Tenants, for the purpose of offering an arrears repayment plan. The agent asserted that the Tenants never responded to any of the Landlord's repayment plan offers.
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 Tenants, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
12. The Landlord's representative and agent were not aware of any circumstances that should be considered in a determination of whether to provide the Tenants with eviction relief, nor were the Tenants or their representative present at the hearing to provide submissions with respect to the Tenants' relief from eviction. For these reasons, it would be unfair to the Landlord to grant the Tenants with eviction relief.

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:**
 - \$11,027.00 if the payment is made on or before April 16, 2023. 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 April 16, 2023 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 April 16, 2023.**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$8,034.44. 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 \$39.42 per day for the use of the unit starting March 17, 2023 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before April 16, 2023, the Tenants will start to owe interest. This will be simple interest calculated from April 17, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before April 16, 2023, then starting April 17, 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 April 17, 2023.

2023 ONLTB 28151 (CanLI)

April 5, 2023 _____ **Date Issued**
 Frank Ebner

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 October 17, 2023 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 April 16, 2023

Rent Owing To April 30, 2023	\$10,841.00
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	\$11,027.00

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

Rent Owing To Hearing Date	\$9,073.72
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	- \$1,199.00
Less the amount of the interest on the last month's rent deposit	- \$26.28
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	\$8,034.44
Plus daily compensation owing for each day of occupation starting March 17, 2023	\$39.42 (per day)