



Order under Section 78(6) Residential Tenancies Act, 2006

Citation: Fernandez v Gervais, 2024 ONLTB 2746

Date: 2024-01-15

File Number: LTB-L-101081-23

In the matter of: 4, 104 Harvey Street
Chatham Ontario N7M1M3

Between: Abhay Fernandez

And

Brandon Gervais

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

JAN 15 2024

Landlord and Tenant Board

Landlord

Tenant

Abhay Fernandez (the 'Landlord') applied for an order to terminate the tenancy and evict Brandon Gervais (the 'Tenant') and for an order to have the Tenant pay the rent they owe because the Tenant did not meet a condition specified in the order issued by the LTB on November 14, 2023 with respect to application LTB-L-056883-23.

This application was decided without a hearing being held.

Determinations:

1. The order provides that the Landlord can apply to the LTB under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenant to terminate the tenancy and evict the Tenant if the Tenant does not meet certain condition(s) in the order. This application was filed within 30 days of the breach.

2. I find that the Tenant has not met the following condition specified in the order:

The Tenant did not pay the lawful rent on time and in full on or before December 1, 2023.

3. The previous application includes a request for an order for the payment of arrears of rent and the order requires the Tenant to make payments by specific due dates. Accordingly, in addition to eviction, the Landlord is entitled to request an order for the payment of arrears owing.

4. The Landlord claimed \$186.00 for the application filing fee in this order. The previous order required the Tenant to pay \$186.00 for the application filing on or before December 31, 2023 or interest would start to accrue January 1, 2024. The prior order does not include the application filing fee as being subject to the section 78 clause. Therefore, the application filing fee is not being ordered within this order.

5. Since the date of the previous order, the Tenant has failed to pay the full rent that became owing for the period from December 1, 2023 to December 31, 2023.
6. The Landlord collected a rent deposit of \$875.00 from the Tenant and this deposit is still being held by the Landlord.
7. Interest on the rent deposit is owing to the Tenant for the period from October 1, 2021 to January 15, 2024.
8. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenant is required to pay.
9. The Landlord is entitled to daily compensation from the day after this order is issued to the date the Tenant moves out of the unit at a daily rate of \$29.11. This amount is calculated as follows: $\$885.50 \times 12$, divided by 365 days.

It is ordered that:

1. Order LTB-L-056883-23 is cancelled.
2. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before January 26, 2024.
3. If the unit is not vacated on or before January 26, 2024, then starting January 27, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. 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 27, 2024.
5. The Tenant shall pay to the Landlord \$400.18*. **(Less any payments made by the Tenant after this application was filed on December 15, 2023)**. This amount represents and the cost of filing the previous application, less the rent deposit and interest the Landlord owes on the rent deposit.
6. The Tenant shall also pay to the Landlord \$29.11 per day for compensation for the use of the unit starting January 16, 2024 to 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 January 26, 2024, the Tenant will start to owe interest. This will be a simple interest calculated from January 27, 2024 at 7.00% annually on the balance outstanding.

January 15, 2024
Date Issued



Kimberly Parish
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

The Tenant has until January 25, 2024 to file a motion with the LTB to set aside the order under s. 78(9) of the Act. If the tenant files the motion by January 25, 2024 the order will be stayed and the LTB will schedule a hearing.

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 27, 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.

* Refer to the attached Summary of Calculations.

Summary of Calculation**Amount the Tenant must pay the Landlord:**

Reason for amount owing	Period	Amount
New Arrears	December 1, 2023 to January 15, 2024	\$1,313.97
Less the rent deposit:		-\$875.00
Less the interest owing on the rent deposit	October 1, 2021 to January 15, 2024	-\$38.79
Plus daily compensation owing for each day of occupation starting January 16, 2024		\$29.11 (per day)
Total the Tenant must pay the Landlord:		\$400.18 +\$29.11 per day starting January 16, 2024