



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

Citation: Fernandes v Kalaichelvan, 2024 ONLTB 33159

Date: 2024-05-06

File Number: LTB-L-085531-23

In the matter of: 82, 2891 RIO CRT
MISSISSAUGA ON L5M0S3

Between: Glynn E Fernandes
Nestor Fernandes
Dympna Fernandes

I hereby certify this is a
true copy of an Order dated
MAY 06, 2024
Siniposthova
Landlord and Tenant Board

Landlords

And

Ramani Kalaichelvan
Ponnudurai Kalaichelvan

Tenants

Glynn E Fernandes, Nestor Fernandes and Dympna Fernandes (the 'Landlords') applied for an order to terminate the tenancy and evict Ramani Kalaichelvan and Ponnudurai Kalaichelvan (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

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

The Landlords, the Landlords' Legal Representative Jordan Nieuwhof, the Landlord's Spouse Arnold Fernandes, and the Tenants attended the hearing.

Preliminary issues:

1. The Tenant Ponnudurai Kalaichelvan ('PK') requested to raise maintenance issues under section 82 of the Residential Tenancies Act (2006) (the 'Act').
2. PK did not notify the Landlords that he was intending to raise section 82 issues prior to the hearing. PK did not submit any evidence regarding maintenance issues to the Landlords or to the Board. PK did not provide a reasonable explanation for failing to provide evidence of his maintenance issues to the Landlords and the Board at least seven days prior to the hearing, as required by Rule 19.4 of the Board's Rules of Procedure.
3. Since the Tenants did not comply with the Board's Rule 19.4 relating to disclosure, I declined to consider the Tenants' maintenance issues under section 82 per Rule 19.5. However, I still heard PK's testimony relating to serious, ongoing issues in the rental unit pursuant to section 83(3)(a) of the Act.

Determinations:

1. The Landlords 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 \$1,588.75. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$52.23. This amount is calculated as follows: $\$1,588.75 \times 12$, divided by 365 days.
5. The Tenants have paid \$800.00 to the Landlords since the application was filed.
6. The rent arrears owing to March 31, 2024 are \$16,816.25. PK disputed the arrears and stated that he had paid over \$200,000 to the Landlords in cash over the course of the 12-year tenancy which had not been accounted for. The Landlords denied this and testified that the Tenants always paid the rent by e-transfer. The onus is on PK to show that these payments were made. PK did not present receipts for the alleged payments. Therefore, on a balance of probabilities, I find that the Landlords' ledger is correct. As such, the rent arrears owing to March 31, 2024 are \$16,816.25.
7. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.

Relief from eviction

9. Section 83(3)(a) of the Act requires the Board to refuse to grant a landlord's application for eviction where the landlord is in serious breach of the landlord's responsibilities or any material covenant in the tenancy agreement. As such, I considered the Tenants' submissions and evidence regarding ongoing maintenance issues in determining whether to deny the eviction.
10. In determining whether the issues the Tenants raised are serious enough to warrant mandatory relief from eviction, I rely on the Board's Interpretation Guideline 7: Relief from Eviction, which states:

A health or safety concern due to lack of repair may be serious enough to justify refusal. Conditions which deprive the tenant of the full use of the premises will usually be serious, particularly if it affects the kitchen, bathroom or sleeping areas.

11. PK testified that: the toilet sideboard is broken, the deck is broken, the wood floor has splinters, and that the kitchen exhaust fan doesn't work. None of these issues deprive the Tenants of the full use of the premises or cause a serious health or safety concern. Therefore, I am not satisfied that the maintenance issues raised by PK warrant mandatory relief from eviction under section 83(3)(a) of the Act. I now turn my mind to delaying the eviction.

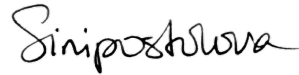
12. PK confirmed that he has no means to repay the arrears to the Landlords. PK testified that he relies on ODSP for his income and is the sole breadwinner in the family. PK's father sometimes assists with paying for living expenses using his pension. PK's two children study in different universities, one in Kitchener and one in Toronto. According to PK, this limits the Tenants' options for finding a new rental unit since the children also live in the rental unit and the house needs to be in between the two universities for travel purposes.
13. The Landlord's husband Arnold Fernandes ('AF') testified that his wife Glynn Fernandes is pregnant, and his father-in-law Nestor Fernandes has a heart condition. According to AF, the large rent arrears are causing the Landlords' family much financial strain. Additionally, the stress from the increasing arrears is negatively affecting their health.
14. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'). The Tenants are a family of four and rely on ODSP for income. However, the Landlords are prejudiced by the large and increasing arrears and are struggling financially as a result. Therefore, I find that it would not be unfair to grant a short postponement of the eviction until May 31, 2024 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**
 - \$20,179.75 if the payment is made on or before May 31, 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 May 31, 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 May 31, 2024.**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$16,719.25. 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 Landlords compensation of \$52.23 per day for the use of the unit starting March 26, 2024 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlords the full amount owing on or before May 31, 2024, the Tenants will start to owe interest. This will be simple interest calculated from June 1, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before May 31, 2024, then starting June 1, 2024, the Landlords 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 Landlords on or after June 1, 2024.

May 6, 2024
Date Issued



Kate Sinipostolova
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 December 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 May 31, 2024

Rent Owing to May 31, 2024	\$20,793.75
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$800.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlords 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	\$20,179.75

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

Rent Owing To Hearing Date	\$17,333.25
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$800.00
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 Landlords 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 Landlords	\$16,719.25
Plus daily compensation owing for each day of occupation starting March 26, 2024	\$52.23 (per day)



Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: Fernandes v Kalaichelvan, 2024 ONLTB 37734

Date: 2024-05-16

File Number: LTB-L-085531-23-RV

In the matter of: 82, 2891 RIO CRT
MISSISSAUGA ON L5M0S3

Between: Glynn E Fernandes
Nestor Fernandes
Dympna Fernandes

And

Ramani Kalaichelvan
Ponnudurai Kalaichelvan

I hereby certify this is a true copy of an Order dated
May 16, 2024
Landlord and Tenant Board

Landlords

Tenants

Review Order

Glynn E Fernandes, Nestor Fernandes and Dympna Fernandes (the 'Landlords') applied for an order to terminate the tenancy and evict Ramani Kalaichelvan and Ponnudurai Kalaichelvan (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was resolved by order LTB-L-085531-23 issued on May 6, 2024.

On May 15, 2024, the Tenants requested a review of the order.

A preliminary review of the review request was completed without a hearing. In determining this request, I reviewed the materials in the LTB's file as well as the audio recording for this hearing.

Determinations:

1. The serious errors alleged by the Tenants can be summarized as follows:
 1. It was a serious error for the Landlord's case not to be adjourned to be heard with an application filed by the Tenants.
 2. It was a serious error for the hearing to proceed without the Tenants having a translator or legal representative.
2. On the basis of the submissions made in the request, I am not satisfied that there is a serious error in the order or that the Tenants were not reasonably able to participate in the proceeding.

3. The hearing member's decision not to adjourn the Landlord's application to be heard with an application filed by the Tenants was reasonable. The reasonable exercise of discretion will not be interfered with on review. As such I find no serious error in this regard.
4. The Tenants attended the hearing. I have listened to the hearing recording. Nothing in the recording suggests that the Tenants were not reasonably able to participate in the proceeding. The Tenant Ponnudurai Kalaichelvan provided testimony and submissions. It was clear that he knew the issues to be determined and exercised his right to be heard. A party that has a procedural fairness concern has the obligation to raise it at the hearing. The Tenants did not raise that they were unable to participate in the hearing without a translator or representative. For those reasons I am not satisfied that the Tenants were not reasonably able to participate in the proceeding or that there was a serious error in this regard.
5. The Tenants also request that termination of the tenancy be delayed. The purpose of a review request is not to provide relief from eviction. The requestor must identify a serious error or that they were not reasonably able to participate in the proceedings. As the Tenants have not done so, the request to review is denied.

It is ordered that:

1. The request to review order LTB-L-085531-23 issued on May 6, 2024 is denied. The order is confirmed and remains unchanged.

May 16, 2024
Date Issued



Amanda Kovats
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.