



Order under Section 69 Residential Tenancies Act, 2006

Citation: Wang v Lacey, 2023 ONLTB 16715

Date: 2023-01-24

File Number: LTB-L-011893-22

In the matter of: 953 PARTINGTON AVE
WINDSOR ON N9B2P1

Between: Qiaolei Wang Landlord

And

Jack Lacey, James Lacey and Sharon
Clements Tenants

Qiaolei Wang (the 'Landlord') applied for an order to terminate the tenancy and evict Jack Lacey, James Lacey, and Sharon Clements (the 'Tenants') because:

- the Tenants did not pay the rent that the Tenants owe (L1 application), and
- the Tenants have been persistently late in paying the Tenants' rent (L2 application).

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on January 10, 2023.

Only the Landlord and the Landlord's Legal Representative Vy Phuong Lu attended the hearing.

As of approximately 10:30 a.m., 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:

L1 Application

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 \$1,570.00. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$51.62. This amount is calculated as follows: \$1,570.00 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, 2023 are \$18,840.00.
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 \$1,570.00 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 \$28.82 is owing to the Tenants for the period from September 22, 2020 to January 10, 2023.
10. The Tenants have not made any rent payments since January 2022. The Landlord testified that while the Tenants have indicated to him that they were open to a payment plan, an agreement was never reached. He further testified that on December 31, 2022 the Tenants promised to pay the arrears and agreed by email to move out by February 28, 2023. He is unsure if this will occur.
11. The Landlord is a recent graduate who has not yet found employment and is experiencing significant hardship from almost a year with no rental income from the property while paying a mortgage and paying for tuition.
12. 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.

L2 Application

13. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, If the Tenants void the L1 Application order, the Tenants shall pay rent on time and in full from February 1, 2023 to February 1, 2024.
14. If the Tenants fail to comply with the conditions set out in paragraph 13 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenants. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenants.
15. The Tenants were in possession of the rental unit on the date the application was filed.

N8 Notice of Termination

16. On February 28, 2022, the Landlord gave the Tenants an N8 notice of termination deemed served on February 28, 2022. The notice of termination contains the following allegations:

- The Tenants have persistently failed to pay the rent on the date it was due. The rent is due on the 1st day of each month. The rent was paid late 7 times in the period from May 2021 to January 2022:
 - May 2021 rent paid May 3 and 14
 - June 2021 rent paid June 4 and 5
 - September 2021 rent paid October 2
 - October 2021 rent paid October 20
 - November 2021 rent paid January 11, 2022
 - December 2021 rent paid January 11, 2022
 - January 2022 rent paid January 11, 2022

No rent was received after January 2022.

17. Based on the Monthly rent, the daily compensation is \$51.62. This amount is calculated as follows: \$1,570.00 x 12, divided by 365 days.

Relief from eviction

18. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to grant relief from eviction subject to the conditions set out at paragraph 13 in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
19. If the Tenants fail to comply with the conditions set out in paragraph 13 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenants. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenants.

It is ordered that:

L1 Application

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:**
 - \$19,026.00 if the payment is made on or before January 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$20,596.00 if the payment is made on or before February 4, 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 February 4, 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 February 4, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$16,373.38. 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 \$51.62 per day for the use of the unit starting January 11, 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 February 4, 2023, the Tenants will start to owe interest. This will be simple interest calculated from February 5, 2023 at 5.00% annually on the balance outstanding.
8. If the unit is not vacated on or before February 4, 2023, then starting February 5, 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 February 5, 2023.

L2 Application

10. If the Tenants void the L1 Application order, the Tenants shall pay rent on time and in full starting from February 1, 2023 to February 1, 2024.
11. If the Tenants fail to comply with the conditions set out in paragraph 10 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenants. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenants.

January 24, 2023

Date Issued

Margo den Haan
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 August 5, 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 January 31, 2023

Rent Owing To January 31, 2023	\$18,840.00
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
Total the Tenants must pay to continue the tenancy	\$19,026.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before February 4, 2023

Rent Owing To February 28, 2023	\$20,410.00
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
Total the Tenant must pay to continue the tenancy	\$20,596.00

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

Rent Owing To Hearing Date	\$17,786.20
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 of the last month's rent deposit	- \$1,570.00
Less the amount of the interest on the last month's rent deposit	- \$28.82
Total amount owing to the Landlord	\$16,373.38
Plus daily compensation owing for each day of occupation starting January 11, 2023	\$51.62 (per day)

