



Order under Section 69 Residential Tenancies Act, 2006

Citation: Al-hamami v Alrashaeideh, 2024 ONLTB 20590

Date: 2024-03-26


File Number: LTB-L-076443-23

In the matter of: 2945 CALIFORNIA AVE
WINDSOR ON N9E4E6

Between: Samar a Al-hamami

And

Ala ahmad Alrashaeideh
Sami saqer Abu dawoud

I hereby certify this is a
true copy of an Order dated
Mar 26, 2024

Landlord and Tenant Board

Landlord

Tenants

Samar a Al-hamami (the 'Landlord') applied for an order to terminate the tenancy and evict Ala ahmad Alrashaeideh and Sami saqer Abu dawoud (the 'Tenant') because:

- The Tenants did not pay that the Tenants owe (L1 application);
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has willfully or negligently caused damage to the premises (L2 application).

The Landlord also applied for an order requiring the Tenants to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This L1/L2 application was heard by videoconference on February 14, 2024 and March 13, 2024.

The Landlord's Legal Representative, H. Ehab Eldin Ahmed Elsayed, the Landlord, and one of the Tenants, A. Alrashaeideh (A.A.), attended the hearing.

Determinations:

1. This application was adjourned from February 14, 2024 as there was insufficient time in the hearing block to determine the issues in this application. Interim Order LTB-L-076443-23-IN was issued on February 27, 2024 directing the Tenants to pay the ongoing rent to the Landlord by the day that it is due until this matter is resolved.
2. There was no dispute that the Tenants did not pay March 2024 rent to the Landlord. A.A. stated that she saw the letter that the Landlord uploaded regarding the mortgagee stating they are in legal position to take possession of the property so she didn't know if she should pay the rent to the Landlord.

3. Given the above, I was satisfied that the Tenants did not comply with the Interim Order LTB-L-076443-23-IN issued February 27, 2024. The letter disclosed by the Landlord was not addressed to the Tenants and confirms that the mortgagee does not have possession it only stated that they are in a legal position to take possession. The Tenants failed to pay rent to the Landlord as directed.

N4 Notice

4. Based on the evidence before me, I was satisfied that 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.
5. At the first hearing, A.A. stated that she did not receive the N4 Notice as she only received the N5 Notice.
6. The certificate of service for the N4 Notice filed with this application stated that the Landlord's Legal Representative gave a copy of the N4 Notice to the Tenants on September 12, 2023 by leaving a copy in the mailbox. At the hearing, the Landlord's Legal Representative initially stated that a paralegal at her office had served the N4 Notice then corrected herself and clarified that the paralegal served a demand letter and that she served the N4 Notice. She submitted that she had taken a photo of the service and could provide it.
7. The Landlord's Legal Representative submitted a copy of photo of the envelope in the mailbox and a copy of a translated WhatsApp message sent on September 21, 2023 from the Landlord to the Tenant which stated "Anyhow, you have until the 26th of the current Month to pay the rental fees according the notice sent to you by the lawyer,..."
8. Subsection 191(1) (d) of the *Residential Tenancies Act, 2006* (the 'Act') states:
 - (1) A notice or document is sufficiently given to a person other than the Board,
 - (d) by leaving it in the mail box where mail is ordinarily delivered to the person;
9. The photo submitted into evidence by the Landlord shows a large envelope addressed to the Tenants in a mailbox. There was no dispute that there is no date stamp on the photo. However, the Landlord's WhatsApp message to the Tenants stating that the Tenants had until September 26, 2023 as per the "notice sent" aligns with the N4 Notice as the termination date is September 26, 2023. The termination date in the N5 Notice is October 2, 2023. Given this and the certificate of service for the N4 Notice filed by the Landlord, in accordance with subsection 191(1) of the Act, I was satisfied that the N4 Notice was sufficiently given to the Tenants on September 12, 2023.
10. The lawful rent is \$2,700.00. It is due on the 1st day of each month.
11. Based on the Monthly rent, the daily rent/compensation is \$88.77. This amount is calculated as follows: \$2,700.00 x 12, divided by 365 days.
12. The Tenants has not made any payments since the application was filed.
13. A.A. did not dispute that the rent arrears owing to March 31, 2024 are \$29,700.00.

14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Last month's rent deposit

15. There was no dispute that the Landlord collected a rent deposit of \$2,700.00 and an additional maintenance deposit of \$2,700.00 from the Tenants at the commencement of this tenancy on September 1, 2022 for a total of \$5,400.00.

16. The Landlord stated that the rent deposit was applied to March 2023 which was the last month in the parties first six month tenancy agreement.

17. Subsection 105(1) of the Act states the following:

The only security deposit that a landlord may collect is a rent deposit collected in accordance with section 106.

18. Section 106 of the Act states in part the following:

(1) A landlord may require a tenant to pay a rent deposit with respect to a tenancy if the landlord does so on or before entering into the tenancy agreement.

(2) The amount of a rent deposit shall not be more than the lesser of the amount of rent for one rent period and the amount of rent for one month.

(10) A landlord shall apply a rent deposit that a tenant has paid to the landlord or to a former landlord in payment of the rent for the last rent period before the tenancy terminates.

19. Pursuant to subsection 106(10) of the Act, a rent deposit can only be applied to the last rental period of the tenancy before the tenancy is terminated. Therefore, I find that the Landlord was not entitled to apply the rent deposit to March 2023 as this tenancy continued. Consequently, I am satisfied that the Landlord is still holding \$5,400.00 as a deposit from the Tenants.

20. Interest on the rent deposit, in the amount of \$128.71 is owing to the Tenants for the period from April 1, 2023 to March 13, 2024.

L2 application

21. At the hearing, the Landlord requested to withdraw this application and the LTB consented to this request.

Relief From Eviction

22. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of 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.


23. The Landlord's Legal Representative submitted that the Landlord is on the brink of losing this property as she is in default of the mortgage due to financial hardship and the Tenants failure to pay the rent that they owe. She also submitted that the Landlord was hoping to receive payment from the Tenant to assist in negotiations with her lender.
24. A.A. stated that they are new to Canada and both her husband and her are continuing their education. She stated that her husband studies end in December 2024. She stated that she is completing a master's degree in nursing but has started a full time job last month. She provided a N9 Notice to the Landlord with a vacate date of June 30, 2024. She is requesting a delay until this time to allow her two children to finish the school year and give them an opportunity to find another rental unit. She stated that she can pay the accruing rent and an additional \$200.00 each month until her husband starts working.
25. The rent arrears currently outstanding are \$29,700.00, which is a significant increase since the application was filed seeking rent arrears \$16,200.00. The Tenants have not made any payments to the Landlord since the application was filed. Therefore, in these circumstances I find that ordering a repayment plan is not fair to the Landlord. The Tenants breached the interim order dated February 27, 2024 by failing to pay the rent owing for March 2024 and had an additional thirty days as a result of the adjournment. Given this, I find that any further delay of the eviction would be unfair in these circumstances.

It is ordered that:

1. The Landlord's L2 application is withdrawn.
2. The tenancy between the Landlord and the Tenants is terminated unless the Tenants voids this order.
3. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$29,886.00 if the payment is made on or before March 31, 2024. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$32,586.00 if the payment is made on or before April 6, 2024. See Schedule 1 for the calculation of the amount owing.
4. 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 April 6, 2024 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
5. **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 6, 2024**
6. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$22,811.30. 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.

7. The Tenants shall also pay the Landlord compensation of \$88.77 per day for the use of the unit starting March 14, 2024 until the date the Tenants moves out of the unit.
8. If the Tenants do not pay the Landlord the full amount owing on or before April 6, 2024, the Tenants will start to owe interest. This will be simple interest calculated from April 7, 2024 at 7.00% annually on the balance outstanding.
9. If the unit is not vacated on or before April 6, 2024, then starting April 7, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 7, 2024.

March 26, 2024
Date Issued



Lisa Del Vecchio
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 7, 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 March 31, 2024

Rent Owing To March 31, 2024	\$29,700.00
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	\$29,886.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before April 6, 2024

Rent Owing To April 30, 2024	\$32,400.00
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	\$32,586.00

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

Rent Owing To Hearing Date	\$28,154.01
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	- \$5,400.00
Less the amount of the interest on the last month's rent deposit	- \$128.71
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	\$22,811.30
Plus daily compensation owing for each day of occupation starting March 14, 2024	\$88.77 (per day)