



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

Citation: Walsh v Fortier, 2023 ONLTB 31294

Date: 2023-04-14

File Number: LTB-L-030050-22

In the matter of: 607 Gormanville Road
North Bay Ontario P1B8N9

Between: Brian Walsh Landlord

And

Jeff Cook and Krysten Fortier Tenants

Brian Walsh (the 'Landlord') applied for an order to terminate the tenancy and evict Jeff Cook and Krysten Fortier (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on April 4, 2023.

Only the Landlord attended the hearing.

As of 1:20 p.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:

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 \$1,400.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$46.03. This amount is calculated as follows: \$1,400.00 x 12, divided by 365 days.

5. The Tenants have paid \$2,100.00 to the Landlord since the application was filed; this was paid direct from ODSP (Jeff Cook).
6. The rent arrears owing to April 30, 2023 are \$38, 500.00.
7. Upon going through the L1 application with the Landlord, it came to rise that the application had been incorrectly filled out; Line 2 on page 4 of 6 was amended at the hearing to \$16,800.00 in rent charged, from \$16,900.00; therefore, the rent owing for this period is \$1,400.00 and the total amount owing in the L1 is \$21,00.00 to February 28, 2022. The date on line 3 of the same page should be the period ending February 28, 2022, not the date the application was filed. The L1/9 update was also amended to reflect the correct calculation of the new rent owing of \$19,600.00 (no rent was paid, therefore. March 1, 2022 through April 30, 2022 is 14 months X \$1,400.00 = \$19,600.00).
8. There is no last month's rent deposit.
9. The Landlord testified that the Tenants paid 2 month's rent when they moved in, this went to May and June 2019 rent. The Tenants had possession of the rental unit since May 2019, although they did not physically move in until July 2019; the Landlord did not know why they Tenants waited to move in.
10. The Tenants had raised section 82 issues plus that there was a last month rent deposit at the previous hearing when it was adjourned due to lack of time to hear the matter On August 18, 2022. The matter was adjourned by this Member, mainly due to the issue regarding the last month rent deposit as the Landlord submitted the arrears were excessive at that time. Interim order LTB-L-030050-22-IN dated August 26, 2022 was issued; it required the Tenants to pay the monthly rent from September 1, 2022 until the matter resolved, if they did not make the payments their evidence and testimony may be refused.
11. Therefore, as the Tenants have breached the interim order by not making any of the ordered rent payments, it is more likely than not that without any extraordinary reason for not making any rent payments over the 8-month since the last hearing date, their testimony and evidence on the section 82 issues would be denied; the only acceptable evidence and testimony would be with respect to the last month rent deposit. As the Tenants did not attend today's hearing, I accept the Landlord's testimony on the last month rent deposit/money the Tenants paid at the beginning of the tenancy. Even if one of these month's was meant to be a last month rent deposit, then there is still not a serious error in the calculations as the Tenants would then owe for the month of June 2019, which would be added to the quantum and then the deposit deducted; and interest owing on the deposit would be nominal compared to the outstanding arrears, a rough calculation being less than \$50.00.
12. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.

13. 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. The Tenants breached the interim order and did not make any of the ordered rent payments, and the Tenants did not attend the hearing.

14. **The amount referenced in paragraph 2 below is not subject to section 207(1) of the Residential Tenancies Act, 2006 (the 'Act'), which limits the Boards monetary jurisdiction to \$35,000.00 plus the application filing fee. In *Hornstein et al. v. Royal Bank*, 2010 ONSC 3134, the Divisional Court granted the Landlord's motion to dismiss the Tenant's appeal of the Landlord Tenant Board order, saying:**

[10] Section 201(1) gives the Board power to order payment to any given person of a sum of money not exceeding the monetary jurisdiction of the Small Claims Court.

[11] Section 74(5) and (6) provide for the voiding of an order before the order becomes enforceable; the subsections require payment to the landlord or the Board of the amount specified pursuant to the eviction order.

[12] Section 74(11) provides for the voiding of an eviction order after it becomes enforceable, upon payment of the outstanding arrears of rent.

[13] To hold that the monetary cap applies to the "outstanding arrears of rent" would result in an absurdity. The defaulting tenant could continue *ad infinitum* to merely pay the monetary limit and continue in possession, all the while continuing to default. (emphasis added)

15. This order contains all the reasons for the decision within it. No further reasons shall be issued.

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:**
 - \$38,701.00 if the payment is made on or before April 25, 2023. See Schedule 1 for the calculation of the amount owing.

This amount exceeds the monetary jurisdiction of the Board. This is an amount that the Tenants can choose to pay if they choose not to vacate the rental unit. The Board is not ordering this amount to be paid. This amount is optional and only required if the Tenants elect to remain in the rental unit. Therefore, the Board is not ordering this amount to be paid and is not ordering an amount that exceeds the limit.

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 25, 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 25, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$38,229.54. 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. **This amount is subject to the monetary jurisdiction set out in section 207(1) of the Act, therefore, the Landlord is entitled to a maximum of \$35,000.00**
6. The Tenants shall also pay the Landlord compensation of \$46.03 per day for the use of the unit starting April 5, 2023 until the date the Tenant moves out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before April 25, 2023, the Tenants will start to owe interest. This will be simple interest calculated from April 26, 2023 at 6.00% annually on the balance outstanding.
8. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
9. If the unit is not vacated on or before April 25, 2023, then starting April 26, 2023, 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 26, 2023.

April 14, 2023

Date Issued

Diane Wade

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 26, 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before April 25, 2023

Rent Owing To April 30, 2023	\$40,600.00
Application Filing Fee	\$201.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,100.00
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	\$38,701.00

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

Rent Owing To Hearing Date	\$40,128.54
Application Filing Fee	\$201.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,100.00
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	- \$
Less the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord	\$38,229.54
Plus daily compensation owing for each day of occupation starting April 5, 2023	\$46.03 (per day)