



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

Citation: Charles Gerditschke v Angelica Donato, 2023 ONLTB 44722

Date: 2023-06-26

File Number: LTB-L-006192-23

In the matter of: 3, 462 HORNER AVE
Pickering ON M8W2B5

Between: Charles Gerditschke

And

Angelica Donato

I hereby certify this is a
true copy of an Order dated
Jun 26, 2023
Landlord and Tenant Board

Landlord

Tenant

Charles Gerditschke (the 'Landlord') applied for an order to terminate the tenancy and evict Angelica Donato (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 8, 2023.

The Landlord Charles Gerditschke and the Tenant Angelica Donato attended the hearing.

Determinations:

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant 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 Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,281.95. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$42.14. This amount is calculated as follows: \$1,281.95 x 12, divided by 365 days.
5. The Tenant has made payments since the application was filed in the amount of \$6,882.00.
6. The rent arrears owing to June 30, 2023 are \$4,200.91.
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 \$1,281.95 from the Tenant 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 \$13.96 is owing to the Tenant for the period from January 1, 2023 to June 8, 2023.

10. I must consider whether it would be unfair to deny relief from eviction. The Landlord has proved his case that arrears are owing, on a balance of probabilities, as the Tenant admits the arrears.
11. I must consider all of the circumstances from both sides and compare the impact on the two parties of granting relief versus not granting relief. I have three options: (i) I can delay eviction to a specified date, beyond the standard 11 days (ii) I can deny eviction or (iii) I can conditionally deny eviction, with conditions imposed.
12. I must also consider whether the Landlord attempted to negotiate an agreement in deciding whether to grant discretionary relief. I am satisfied that the Landlord has tried, in past, to work with the Tenant, as he has been before the LTB, 5 – 6 times, with this Tenant, obtaining payment plans and consent orders. The Tenant did not contradict this evidence and I have no reason to doubt it.
13. In considering relief from eviction under s. 83 of the Act, I must also consider any impact on the parties from Covid, and I do not believe that there is any here.
14. This is a very unfortunate situation. Ms. Donato has been a long standing tenant. She claims she has been living there for 12 years. Mr. Gerditschke testified 7 – 10 years. The Landlord testified that he has been before the LTB many times in relation to this Tenant, 5 – 6 times in fact. There have been standard orders, where eviction is ordered unless the arrears are paid off by a time, and the Tenant complies, but then when the order lapses, she stops paying on time. Payment plans have also been put in place, and the Tenant pays for the duration of the plan, but when it lapses, so do her payments. The Landlord described it as “going in circles”.
15. The Tenant is a single parent with a five-year-old child living with her. Her mother is also currently staying with her, as she cannot afford to live elsewhere. She is adjusting to life without her ex-partner who previously paid part of the rent, though he kept losing his jobs. She has been on a two-year mental health leave after losing her grandparents. She has suffered trauma, as when she found another tenant dead in his unit. She now has a job at Woodbine, though she is still receiving decreasing amounts of Ontario Works. She testified that she does not like falling into arrears. She plans to seek help from the eviction prevention program, but could not get in touch with the case worker until next week. She claims that she could do a payment plan, if the prevention program fails. She could pay rent by the first of the month, and make payment of the arrears on the 20th of each month for 7 months, in payments of \$600/month.
16. The Tenant requested 90 days to move if the Board were to grant eviction. The Landlord was prepared to offer 60 days.
17. It is clear that payment programs with the Tenant have not worked in the past.
18. The N4 in this matter was served in November 2022. The arrears at that time were \$4,191.80. That is about 3 months’ rent.
19. At the time of the L1 application for arrears, the total was \$4,893.16.
20. The Tenant was served, by mail, with notice of the hearing, on 27 March 2023.
21. The Tenant has had over 2 months to suggest a payment plan, or to contact the eviction program. Yet, she is only now, at the last hour, contacting them for help.

22. 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. The Landlord "offered" the Tenant 60 days to move out, only when asked in response to the Tenant's request for 90 days to move out, if eviction was ordered. In the past, it is clear that granting relief from eviction has not fostered in this Tenant a habit of paying her rent. Due to the fact that this Landlord has been before the LTB on many occasions with this Tenant, I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

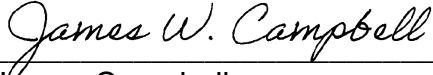
1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - **\$4,386.91** if the payment is made on or before June 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - **\$5,668.86** if the payment is made on or before July 7, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after June 30, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before July 7, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$2,146.17. 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 Tenant. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$41.12 per day for the use of the unit starting June 9, 2023 until 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 June 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 1, 2023 at 6.00% annually on the balance outstanding.
8. The Landlord or the Tenant 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 July 7, 2023, then starting July 8, 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 July 8, 2023.

June 26, 2023
Date Issued



James Campbell
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 January 8, 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.

*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

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 June 30, 2023

| | |
|----------------------------------------------------------------------------------------|-------------------|
| Rent Owing To June 30, 2023 | \$4,200.91 |
| Application Filing Fee | \$186.00 |
| NSF Charges | \$0.00 |
| Less the amount the Tenant paid to the Landlord since the application was filed | -\$0.00 |
| 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 | \$4,386.91 |

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before July 7, 2023

| | |
|----------------------------------------------------------------------------------------|-------------------|
| Rent Owing To July 31, 2023 | \$5,482.86 |
| Application Filing Fee | \$186.00 |
| NSF Charges | \$0.00 |
| Less the amount the Tenant paid to the Landlord since the application was filed | -0.00 |
| 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 | \$5,668.86 |

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

| | |
|----------------------------------------------------------------------------------------|--------------|
| Rent Owing To Hearing Date | \$3,256.08 |
| Application Filing Fee | \$186.00 |
| NSF Charges | \$0.00 |
| Less the amount the Tenant paid to the Landlord since the application was filed | - \$0.00 |
| 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 | - \$1,281.95 |
| Less the amount of the interest on the last month's rent deposit | - \$13.96 |
| 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 | \$2,146.17 |
| Plus daily compensation owing for each day of occupation starting June 9, 2023 | \$41.12 (per day) |