



Order under Section 69 Residential Tenancies Act, 2006

Citation: Baker v Warnock, 2024 ONLTB 16049

Date: 2024-03-05 **File Number:** LTB-L-057393-23-HR

In the matter of: 1, 4559 Ste Catherine Street
St-Isidore ON K0C2B0

Between: Jean Marc Baker Landlord

And

Eileen Warnock Tenants
Joe Warnock

Jean Marc Baker (the 'Landlord') applied for an order to terminate the tenancy and evict Eileen Warnock and Joe Warnock (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on December 18, 2023.

The Landlord and the Tenant, Eileen Warnock attended the hearing. The other named Tenant was unable to attend the hearing and Eileen Warnock spoke on behalf of the other named Tenant. Eileen Warnock was supported at the hearing by her daughter, Shannon Whiffen.

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 \$810.55. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$26.65. This amount is calculated as follows: \$810.55 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 December 31, 2023 are \$17,021.55.

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 \$644.62 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 \$67.42 is owing to the Tenants for the period from August 1, 2017 to December 18, 2023.
10. Section 83 considerations
11. 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.
12. The Landlord sought a standard eviction order. His position was that the rent arrears owing is substantial and the Tenants have not paid any rent since March 2022 and have not made any effort to establish a payment plan for the rent arrears owing.
13. The Tenant, Eileen Warnock testified that she was led to believe that the rent arrears owing had been paid by her friend identified as Patricia and further that her friend would assist the Tenants with paying the lawful rent in full moving forward when due. Ms. Warnock testified that she did not find out until November 2023 that there were rent arrears owing as her friend had not in fact not paid the rent. ~~Ms. Warnock did not submit any documentary evidence to support her claim that the rent arrears owing had been paid nor was her friend Patricia present as a witness to provide testimony on this basis.~~
14. The Tenants sought a conditional order in the form of a payment plan. In the alternative, they sought a 2-to-3-month delay in eviction to find new accommodation. The Tenants proposed paying \$200.00 per month in addition to the monthly rent.
15. The Tenant, Eileen Warnock testified about their monthly income and expenses. Without adding the additional repayment proposed, the Tenants income exceed their monthly expenses by approximately \$1,259.00 per month. Upon seeking further clarification, the Tenant, Eileen Warnock testified that they could afford a payment of \$400.00 per month in addition to the monthly rent if necessary.
16. The Tenant, Eileen Warnock testified that she and her husband are 73 years old and must remain in the community for various supports they receive. Ms. Warnock further testified that she and her husband do not have a vehicle and depend on volunteers in the community to assist them with their medical appointments as their children are located 45 minutes away.
17. The Landlord testified that he has helped the Tenants look for new accommodation in the immediate community and that there are units in the immediate community where the Tenants could reside and have the support they require. The Landlord testified that the payment plan proposed by the Tenant at \$200.00 monthly would mean a timeframe of 7 years for payment of the arrears owing or 3.5 years if the payment plan was set at \$400.00

monthly. The Landlord testified that the Tenants have not shown any good faith in paying the rent since March 2022 and to stretch out the payment of the rent arrears which are substantial would be financially prejudicial to the Landlord.

18. Although, I am sympathetic to the Tenants' situation, I find it would be unfair to deny eviction and order the payment plan proposed by the Tenants. Although based on the Tenants testimony there appears to be a surplus in monthly income of \$1,259.00, I am not satisfied that all expenses have been reported by the Tenants; therefore, in my opinion, the surplus in monthly income is overstated. The Tenants testified that they were led to believe that their friend had paid the rent arrears owing however did not either have the friend present to testify to this fact or provide any documentary evidence to support this testimony. Further, the Tenants did not provide any testimony that would suggest their follow-up with the Landlord to in fact confirm that the payment of rent arrears owing was made by their friend.
19. I do, however, find that it would not be unfair to delay eviction until April 30, 2024 to allow the Tenants additional time to find new accommodations for themselves.

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:**
 - \$19,639.20 if the payment is made on or before March 31, 2024. See Schedule 1 for the calculation of the amount owing.
- OR**
 - \$20,449.75 if the payment is made on or before April 30, 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 April 30, 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 April 30, 2024.**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$16,164.66. 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 \$26.65 per day for the use of the unit starting December 19, 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 March 16, 2024, the Tenants will start to owe interest. This will be simple interest calculated from May 1, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before April 30, 2024, then starting May 1, 2024, 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 May 1, 2024.

March 5, 2024

Date Issued

Charles Dowdall

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 November 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 March 31, 2024

Rent Owing To March 31, 2024	\$19,453.20
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	\$19,639.20

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before April 30, 2024

Rent Owing To April 30, 2024	\$20,263.75
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	\$20,449.75

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

Rent Owing To Hearing Date	\$16,690.70
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	- \$644.62

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Less the amount of the interest on the last month's rent deposit	- \$67.42
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	\$16,164.66
Plus daily compensation owing for each day of occupation starting December 19, 2023	\$26.65 (per day)