



Order under Section 69 Residential Tenancies Act, 2006

Citation: Marlatt v Gillies, 2024 ONLTB 399

Date: 2024-02-12

File Number: LTB-L-056331-23

In the matter of: Unit A, 498 HILL ST E
FERGUS ON N1M1H7

Between: William Marlatt and Michael Guerriero Landlords

And

Natalie Gillies Tenant

William Marlatt and Michael Guerriero (the 'Landlords') applied for an order to terminate the tenancy and evict Natalie Gillies (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on December 7, 2023.

The Landlords, Landlord's Legal Representative, Reena Basser, and the Tenant attended the hearing.

Determinations:

Preliminary Matter:

1. The parties had engaged in mediation but were unable to reach an agreement. As such, a merits hearing was held for this application.

L1 Application:

2. The Landlords served the Tenant with a valid Notice to End Tenancy Early for Nonpayment 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.
3. As of the hearing date, the Tenant was still in possession of the rental unit.
4. The lawful rent is \$2,400.00. It is due on the 1st day of each month.

5. Based on the Monthly rent, the daily rent/compensation is \$78.90. This amount is calculated as follows: \$2,400.00 x 12, divided by 365 days.
6. The Tenant has not made any payments since the application was filed.
7. The rent arrears owing to December 31, 2023 are \$14,400.00. The Tenant stated that they believed these arrears were incorrect as the last month's rent deposit had not been factored as part of the N4 notice and indicated that she had been served an N12 notice where one month additional rent, as compensation, should also have been applied as well.
8. The Landlord's Legal Representative stated that the rent deposit is not included as part of the rent arrears as the Tenant is still living in the unit. In addition, she acknowledged that an N12 notice was served for landlord's own use. However, the Landlords then decided to not pursue this. The Landlord's Legal Representative provided additional material which included the N12 notice and confirmation that the one month additional compensation had not been provided to the Tenant. In addition, she confirmed the rent deposit had not been applied to the rent arrears.
9. The Tenant provided reply evidence which includes the N12 notice and text messages with the Landlords. The text messages appear to address Tenant possibly vacating the unit due to Landlords requiring use of the unit. However, the documentary material does not refute the Landlord's submissions on the one month compensation relating to an N12 and the rent deposit.
10. Based on the evidence presented, the Tenant has not established that the rent arrears, as presented by the Landlords, to be incorrect.
11. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlords collected a rent deposit of \$2,400.00 from the Tenant and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
13. Interest on the rent deposit, in the amount of \$71.18 is owing to the Tenant for the period from October 1, 2022 to December 7, 2023.
14. 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 postpone the eviction until March 13, 2024 pursuant to subsection 83(1)(b) of the Act. The Tenant indicated they have two dogs and mobility issues due to previous surgeries. In addition, she testified about her difficulties in securing a new rental unit. As such, the postponed eviction date will provide the Tenant additional time to secure new accommodations.

It is ordered that:

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**
 - \$19,386.00 if the payment is made on or before February 29, 2024. See Schedule 1 for the calculation of the amount owing.

OR

 - \$21,786.00 if the payment is made on or before March 13, 2024. 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 March 13, 2024 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 March 13, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlords \$10,267.12. 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 Landlords owe 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 Landlords compensation of \$78.90 per day for the use of the unit starting December 8, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlords the full amount owing on or before February 23, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 24, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before March 13, 2024, then starting March 14, 2024, the Landlords 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 Landlords on or after March 14, 2024.

February 12, 2024

Date Issued

Justin Leung

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 September 14, 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 29, 2024

Rent Owing To January 31, 2024	\$19,200.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords 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 Landlords owe 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	\$19,386.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before March 13, 2024

Rent Owing To March 31, 2024	\$21,600.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords 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 Landlords owe 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	\$21,786.00

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

Rent Owing To Hearing Date	\$12,552.30
Application Filing Fee	\$186.00
NSF Charges	\$0.00

2024 ONLTB 399 (CanLI)

Less the amount the Tenant paid to the Landlords 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	- \$2,400.00
Less the amount of the interest on the last month's rent deposit	- \$71.18
Less the amount the Landlords owe 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 Landlords	\$10,267.12
Plus daily compensation owing for each day of occupation starting December 8, 2023	\$78.90 (per day)