



Order under Section 69 Residential Tenancies Act, 2006

Citation: Krebs v Arnburg, 2024 ONLTB 10292

Date: 2024-02-08

File Number: LTB-L-073268-22

In the matter of: 8, 50 GLEN EVEREST RD Toronto
ON M1N1J3

Between: Carolyn Krebs Landlord

And

Tyler Arnburg and Jennifer Nolan-gibbs Tenant

Carolyn Krebs (the 'Landlord') applied for an order to terminate the tenancy and evict Tyler Arnburg and Jennifer Nolan-gibbs (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 30, 2024 at 1:00 pm.

The Landlord and the Tenants 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 \$1,467.40. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$48.24. This amount is calculated as follows: \$1,467.40 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The alleged rent arrears owing to January 31, 2024, are \$39,585.00.

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 \$1,467.40 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 \$73.27 is owing to the Tenant for the period from February 1, 2022 to January 30, 2024.
10. The Tenant testified that didn't believe the arrears owing were as alleged. It was their position that they were owed an abatement of rent due to alleged maintenance issues that the Landlord had failed to address which he requested be considered as part of the matter before me.
11. In response the Landlord objected to the Tenant's request, testifying neither her nor her staff had received any disclosure or had ever been informed of the alleged maintenance issues.
12. Canvassing the Tenant he testified that the Landlord and refused to respond to his attempts to contact her and claimed that the Landlord's staff were never present at the rental complex.
13. Reviewing the file, I saw the Tenant had made several submissions to the Board but were not laded or organized as per the Boards Rules and Guidelines. Furthermore, I was not satisfied that the Tenant had actually attempted to disclose the issues he wished to raise and given the timelines, could still file his own separate applications, thereby protecting his rights. Accordingly for this reason I directed that the matter would proceed solely on the Landlord's evidence.
14. In response the Tenant then testified that he had paying the rent by cash, but again reiterated the Landlord's staff were never present to receive it.
15. In response the Landlord testified that Tenants hadn't made any payments towards the rent since October 2021.
16. Having considered the above testimony and evidence I was satisfied that the arrears were \$39,585.00 as alleged.
17. Canvassing the Tenant, he then testified that he would require 60-90 days to move out and find a new rental unit owing to the fact he had two small children.
18. In response the Landlord submitted any relief, given the arrears owing would be prejudicial.
19. The amount of rent arrears owing by the Tenant exceeds the monetary jurisdiction of the Board. Section 207(1) of the *Residential Tenancies Act, 2006* ("Act") limits the monetary jurisdiction of the Board to that of the Small Claims Court. At this time that amount is \$35,000.00, and proceeding with an application with the Board extinguishes any rights the Landlord may have to pursue the full amount owing at the Superior Court. The Landlord

was made aware of the Board's monetary jurisdiction and chose to proceed with this application.

20. While the Board cannot order a person to pay more than \$35,000.00 in accordance with s. 207(1) of the Act, I find that this does not apply to the "stay and pay" option set out in paragraph 2 the order below. In the recent decision of *Galaxy Real Estate Core Ontario LP v. Kirpichova et al.*, 2023 ONSC 4356, the Divisional Court confirmed that the Board's monetary jurisdiction does not apply to the amount the Tenants must pay if they choose to void the order and continue the tenancy in accordance with section 74(4) of the Act. Therefore, the Tenant must pay the full arrears owing, plus the Landlord's costs, if they want to void the order and continue this tenancy.
21. If the Tenant chooses not to pay the full amount owing and continue the tenancy then this order terminates the tenancy and requires the Tenants to pay the amount up to the Board's monetary jurisdictional limit of \$35,000.00 plus the cost of filing the application.
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 and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
23. Specifically, given the amount of arrears owing and the fact the Tenant has made no effort to pay the rent, I am satisfied any relief granted would be prejudicial to the Landlord.

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:**
 - \$41,238.40 if the payment is made on or before February 19, 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 February 19, 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 February 19, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$35,186.00. 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 \$48.24 per day for the use of the unit starting January 31, 2024 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 February 19, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 20, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before February 19, 2024, then starting February 20, 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 February 20, 2024.

2024 ONL TB 10292 (CanLII)

February 8, 2024

Date Issued

Kelly Delaney

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 August 20, 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 19, 2024

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| Rent Owing To February 29, 2024 | \$41,524.00 |
| 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 | \$41,238.40 |

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

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|--|----------------------|
| Rent Owing To Hearing Date | \$39,536.76 |
| 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 | - \$1,467.40 |
| Less the amount of the interest on the last month's rent deposit | - \$73.27 |
| 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 (maximum monetary jurisdiction) | \$35,186.00 |
| Plus daily compensation owing for each day of occupation starting January 31, 2024 | \$48.24 (per day) |