



Order under Section 69 Residential Tenancies Act, 2006

Citation: Sarker v Alzate, 2024 ONLTB 4529

Date: 2024-01-24

File Number: LTB-L-056326-23

In the matter of: BASEMENT APT, 208 RANDALL CRES Toronto
ON M1M3K2

Between: Niranjan Sarker Landlord

And

John Alzate Tenants
Maria Seccia

Niranjan Sarker (the 'Landlord') applied for an order to terminate the tenancy and evict John Alzate and Maria Seccia (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

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

The Landlord and the Tenants attended the hearing.

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 \$1,600.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$52.60. This amount is calculated as follows: \$1,600.00 x 12, divided by 365 days.
5. The Tenants have paid \$7,990.00 to the Landlord since the application was filed.
6. The rent arrears owing to December 31, 2023 are \$3,810.00.
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 \$900.00 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 \$195.04 is owing to the Tenants for the period from September 1, 2011 to December 7, 2023.

Relief from eviction

10. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the Landlord's inability to sustain the bills without the Tenants payments, and the Tenants unwillingness to offer a reasonable payment plan for their arrears, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
11. The position of the Landlord is the tenancy should be terminated. The Landlord's only income is the rent for the unit plus his CPP monthly payment. The Landlord is forced to use his limited income to pay for the mortgage and other bills associated with the property when the Tenants fail to pay their rent.
12. The Tenants requested a payment plan requiring them to pay just \$50.00 per month towards the arrears, which would last for 80 months. However, based on the Tenant's testimony about their financial circumstances, it appears to me that the Tenants should be able to pay back the Landlord in a more reasonable amount of time, approximately 6 months. When I asked the Tenants about a more suitable payment plan for the Landlord, they denied being able to pay anything more than \$50.00 per month toward the arrears, without providing a justifiable reason.
13. I find that the Tenants' proposed repayment plan would be unfair and unduly prejudicial to the Landlord as it would require the Landlord to wait over 6 years for 3 months of rent that was lawfully due.
14. Given the length of time to issue this order, I find the prejudice to the Landlord to delay the termination date any longer would outweigh that of the Tenants.

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:**
 - \$5,596.00 if the payment is made on or before January 31, 2024. See Schedule 1 for the calculation of the amount owing.

OR

- \$7,196.00 if the payment is made on or before February 4, 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 has paid the full amount owing as ordered plus any additional rent that became due after February 4, 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 February 4, 2024**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$1,669.16. 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 \$52.60 per day for the use of the unit starting December 8, 2023 until the date the Tenants moves out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before February 4, 2024, the Tenants will start to owe interest. This will be simple interest calculated from February 5, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before February 4, 2024, then starting February 5, 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 5, 2024.

2024 ONLTB 4529 (CanLII)

January 24, 2024

Date Issued

Elena Jacob

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 5, 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 January 31, 2024

Rent Owing To January 31, 2024	\$13,400.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$7,990.00
Total the Tenants must pay to continue the tenancy	\$5,596.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before February 4, 2024

Rent Owing To February 29, 2024	\$15,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$7,990.00
Total the Tenants must pay to continue the tenancy	\$7,196.00

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

Rent Owing To Hearing Date	\$10,568.20
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$7,990.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$900.00
Less the amount of the interest on the last month's rent deposit	- \$195.04
Total amount owing to the Landlord	\$1,669.16
Plus daily compensation owing for each day of occupation starting December 8, 2023	\$52.60 (per day)