



Order under Section 69 Residential Tenancies Act, 2006

Citation: 35-39 Brookwell Drive Limited v Gaete, 2024 ONLTB 3958

Date: 2024-02-07

File Number: LTB-L-070975-23

In the matter of: 409, 39 BROOKWELL DRIVE
TORONTO ON M3N2Y4

Between: 35-39 Brookwell Drive Limited Landlord

And

Cecilia Gaete, Richard Gaete and Pino Galo Tenants

35-39 Brookwell Drive Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Cecilia Gaete, Richard Gaete and Pino Galo (the 'Tenants') because the Tenants did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 3, 2024.

Only the Landlord's Legal Representative, Samuel Korman, attended the hearing.

As of 1:36 pm, the Tenants were not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment 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 \$1,593.31. It is due on the 1st day of each month. The rent changed on January 1, 2024.
4. Based on the Monthly rent, the daily rent/compensation is \$52.38. This amount is calculated as follows: \$1,593.31 x 12, divided by 365 days.
5. The Tenants have paid \$7,075.44 to the Landlord since the application was filed.
6. The rent arrears owing to January 31, 2024 are \$1,089.67.
7. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.

8. There is no last month's rent deposit.
9. 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 February 29, 2024 pursuant to subsection 83(1)(b) of the Act. The Landlord previously had discussions with the Tenants relating to a postponed eviction date which they supported. While they did not attend this hearing, the Landlord's Legal Representative stated they are supportive of a postponed eviction by one month to February 29, 2024 to provide the Tenants additional time to possibly address the rent arrears and preserve their tenancy.

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:**
 - \$2,883.98 if the payment is made on or before February 29, 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 February 29, 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 29, 2024**
5. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the arrears of rent, compensation and the cost of filing the application the Landlord is entitled to by \$145.50. See Schedule 1 for the calculation of the amount owing. However, the Landlord is authorized to deduct from the amount owing to the Tenants \$52.38 per day for compensation for the use of the unit starting January 4, 2024 until the date the Tenants move out of the unit.
6. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
7. If the unit is not vacated on or before February 29, 2024, then starting March 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. 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 March 1, 2024.

February 7, 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 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 February 29, 2024

Rent Owing To February 29, 2024	\$9,758.42
Application Filing Fee	\$201.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$7,075.44
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$2,883.98

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

Rent Owing To Hearing Date	\$6,728.94
Application Filing Fee	\$201.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$7,075.44
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	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total amount owing to the Landlord	\$(145.50)
Plus daily compensation owing for each day of occupation starting January 4, 2024	\$52.38 (per day)