



Order under Section 69 Residential Tenancies Act, 2006

Citation: Miller v Tooley, 2024 ONLTB 11324

Date: 2024-02-15

File Number: LTB-L-062458-23

In the matter of: 14, 1040 CLARENCE ST
NORTH BAY ON P1B3W4

Between: John Miller Landlord

And

Jeremy Tooley Tenant

John Miller (the 'Landlord') applied for an order to terminate the tenancy and evict Jeremy Tooley (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 25, 2024.

Only the Landlord's Agent, Miles MacMillan, attended the hearing.

As of 1:48 PM, the Tenant was 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 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 \$1,417.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$46.59. This amount is calculated as follows: \$1,417.00 x 12, divided by 365 days.

5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to January 31, 2024, are \$8,332.00.
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 \$1,350.00 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 \$53.37 is owing to the Tenant for the period from December 20, 2021, to January 25, 2024.

Section 83

10. Section 83 requires that I consider all the circumstances, including the Tenant's and the Landlord's situations to determine if it would be appropriate to grant section 83 relief from eviction.
11. The Landlord's agent advised that the Landlord has tried to reach out to the Tenant for a repayment plan, without success. The Landlord's agent was not made aware of any reasons to consider under s. 83. There are substantial arrears owing and the Tenant did not attend the hearing, and thus did not provide any evidence that may be relevant to my determination under s. 83.
12. I have considered all of the disclosed circumstances in accordance with subsection 83 of the *Residential Tenancies Act, 2006* (RTA), including 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.

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:**
 - \$9,935.00 if the payment is made on or before February 26, 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 26, 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 26, 2024.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$6,862.38. 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 \$46.59 per day for the use of the unit starting January 26, 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 26, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 27, 2024, at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before February 26, 2024, then starting February 27, 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 27, 2024.

February 15, 2024

Date Issued

Kevin O'Brien

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 27, 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 26, 2024

Rent Owing To February 29, 2024	\$9,749.00
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	\$9,935.00

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

Rent Owing To Hearing Date	\$8,079.75
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 of the last month's rent deposit	- \$1,350.00
Less the amount of the interest on the last month's rent deposit	- \$53.37
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	\$6,862.38
Plus daily compensation owing for each day of occupation starting January 26, 2024	\$46.59 (per day)