



Order under Section 69 Residential Tenancies Act, 2006

Citation: Bacon v Millar, 2024 ONLTB 2227

Date: 2024-01-19

File Number: LTB-L-034550-23

In the matter of: 28 PLAZA SQ
BELLEVILLE ON K8N4J3

Between: Julie Bacon and Linda Belanger Landlords

And

Nikki Millar, Harlavano Haye and Candy Kelleher Tenants

Julie Bacon and Linda Belanger (the 'Landlords') applied for an order to terminate the tenancy and evict Nikki Millar, Harlavano Haye and Candy Kelleher (the 'Tenants') because:

- the Tenants did not pay the rent that the Tenants owe (L1 application); and
- the Tenants have been persistently late paying the rent (L2 application)

This application was heard by videoconference on December 19, 2023.

The Landlord, Linda Belanger, the Landlord's Legal Representative, Lorrie Mccullough and the Tenant, Harlavano Haye, attended the hearing.

Determinations:

1. By way of background, this is a month-to-month tenancy in which rent is due on the 1st of the month in the amount of \$1,486.25. This tenancy began in November 2022 and consists of three people.

L2 Application:

2. The Landlord's L2 application is based on an N8 notice of termination, served to the Tenants on April 14, 2023 with a termination date of June 30, 2023 pursuant to section 58(1) of the Act. The notice alleges the Tenants have been persistently late in making the rent payments for the period between November 2022 to April 2023. In 2022, the Tenants have been late in paying the rent for the months of November and December. In 2023, the rent was paid late for the months of January, February and April with no payments made in March.

3. The Landlords testified that since the N8 notice of termination was served, the Tenants had made partial payments of rent from April to December 2023.

4. The Landlords seek a termination of the tenancy as the Tenant's failure to pay the rent on time has occurred over a prolonged period. The Landlords have previously attempted to resolve this issue with the Tenants which was not successful.
5. The Landlords oppose any conditional order as there have been previous repayment plans that have been breached by the Tenants. As such, they do not believe a conditional order, in this instance, would be appropriate.
6. Based on the evidence before the Board, I find the Tenants have been persistently late in paying the rent for most of the period between November 2022 to April 2023. The Tenant submitted that their financial status has recently improved, and they intend to begin paying their rent on time.
7. I do not find a conditional order would be appropriate under the circumstances as the evidence does not suggest the Tenants are able to pay the rent on time going forward. I say this as, based on the Landlord's evidence, attempts have been made to negotiate a repayment plan but the Tenants has not participated in discussions on this. In addition, a conditional order could result in further breaches and increase the financial burden upon the Landlords.
8. In recognizing that there are other persons living in the unit and possible health issues with this Tenant and their mother who also resides there, I believe a postponement in the eviction date by one month would be appropriate.

L1 Application

9. The Landlords 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.
10. As of the hearing date, the Tenants were still in possession of the rental unit.
11. The lawful rent is \$2,275.00. It is due on the 1st day of each month.
12. Based on the Monthly rent, the daily rent/compensation is \$74.79. This amount is calculated as follows: $\$2,275.00 \times 12$, divided by 365 days.
13. The Tenants have paid \$12,525.00 to the Landlords since the application was filed.
14. The rent arrears owing to December 31, 2023 are \$9,600.00.
15. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
16. The Landlords collected a rent deposit of \$2,275.00 from the Tenants 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.

17. Interest on the rent deposit, in the amount of \$64.51 is owing to the Tenants for the period from November 1, 2022 to December 19, 2023.

18. Having 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 18, 2024 pursuant to subsection 83(1)(b) of the Act.

19. The Tenants had made partial rent payments just prior to this hearing. In addition, this Tenant had outlined medical issues which their mother is facing, and its impact upon their family. It is determined a postponement of the eviction by one month to February 18, 2024 is appropriate recognizing there may be medical issues that affect her mobility. An additional month's time is reasonable as any possible increase in rent arrears would not be significant thus limiting the impact towards the Landlords.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated unless the Tenant voids this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlords or to the LTB in trust:**
 - \$12,061.00 if the payment is made on or before January 31, 2024. See Schedule 1 for the calculation of the amount owing.

OR

 - \$14,336.00 if the payment is made on or before February 18, 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 18, 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 18, 2024**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$6,592.50. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlords compensation of \$74.79 per day for the use of the unit starting December 20, 2023 until the date the Tenant moves out of the unit.
7. If the Tenants do not pay the Landlords the full amount owing on or before January 30, 2024, the Tenants will start to owe interest. This will be simple interest calculated from January 31, 2024 at 7.00% annually on the balance outstanding.

8. If the unit is not vacated on or before February 18, 2024, then starting February 19, 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 February 19, 2024.

January 19, 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 August 19, 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	\$24,400.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$12,525.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlords owe 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	\$12,061.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before February 18, 2024

Rent Owing To February 29, 2024	\$26,675.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$12,525.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlords owe 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	\$14,336.00

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

Rent Owing To Hearing Date	\$21,271.01
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$12,525.00
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	- \$2,275.00
Less the amount of the interest on the last month's rent deposit	- \$64.51
Less the amount the Landlords owe 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 Landlords	\$6,592.50
Plus daily compensation owing for each day of occupation starting December 20, 2023	\$74.79 (per day)