



Order under Section 69 Residential Tenancies Act, 2006

Citation: O'neill v Abar, 2024 ONLTB 2636

Date: 2024-01-09

File Number: LTB-L-071183-22

In the matter of: 2, 68 CUMBERLAND ST BARRIE
ON L4N2P6

Between: Robert O'neill Landlord

And

Gus Abar Lianne Gervais Tenants

Robert O'neill (the 'Landlord') applied for an order to terminate the tenancy and evict Gus Abar and Lianne Gervais (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe. The Landlord also applied for an order to terminate the tenancy and evict the Tenants because:

- the Tenants have been persistently late in paying the Tenants rent.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on November 9, 2023.

The Landlord, the Landlord's legal representative C. Weatherston and the Tenant L. Gervais attended the hearing. Ms. Gervais had authority to speak on behalf of G. Abar.

Determinations:

L1 Application

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 \$1,280.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$42.08. This amount is calculated as follows: \$1,280.00 x 12, divided by 365 days.
5. The Tenants have paid \$900.00 to the Landlord since the application was filed.
6. The rent arrears owing to November 30, 2023 are \$15,680.00.
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 \$1,250.00 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 \$65.34 is owing to the Tenants for the period from April 1, 2021 to November 9, 2023.

L2 Application

10. On October 18, 2022, the Landlord gave the Tenant an N8 notice of termination deemed served on October 23, 2022. The N8 notices alleges that the Tenants have persistently paid their rent late 10 times between January 2022 to October 2022.
11. The Tenants have persistently failed to pay the rent on the date it was due. The rent is due on the 1st day of each month. The rent has been paid late every month since the N8 notice was served.
12. L.G. agreed to the total arrears owing and did not dispute that they she has persistently paid her rent late. The only issue before me is to consider relief from eviction.

Relief from Eviction

13. L.G. submitted that she is in arrears because she tries to help her family before she helps herself. That she want's an opportunity to stay in the unit and proposes a payment plan by paying an additional \$200.00 per month towards arrears, plus her regular monthly rent. This will take the Tenants approximately 8 years to pay off the arrears.
14. L.G. submitted that both her and her husband are on disability and that she has recently received an increase. That her husband will also receive an increase in disability but does not know when.
15. L.G. submitted that if they must vacate the unit, she is requesting 90 days or they will face homelessness. That it's difficult for them to move sooner as her husband has had 2 hip

replacements and can hardly walk. L.G. submitted that she suffers from mental health issues and is just looking for more time to vacate as they currently have no where to go.

16. The Landlord refused the proposed payment plan made by the Tenant. The Landlord submitted that 8 years was an unreasonable amount of time to pay off the arrears. The Landlord submitted that he has taken out a line of credit to pay off the mortgage as these Tenants are not the only tenants in arrears.
17. That due to the high interest rates, his mortgage has increase by \$2,000.00. The Landlord submitted that he is the only income earner of the family, and he cannot support both his family and that of the Tenants. The Landlord submitted that a standard order would be appropriate in the circumstances as the Tenants income is less then their expenses and has no faith that he will ever collect any money from the Tenants.
18. I must agree with the Landlord. L.G. submitted that their total monthly income was \$1,980.00 per month, however, their monthly expenses including rent was \$2,199.00. This leaves the Tenants in a deficit of \$219.00. The tenancy is not viable. The Tenants cannot afford the monthly rent and will not be able to afford an additional \$200.00 per month in arrears.
19. Allowing the tenancy to continue and or allowing the Tenants an additional 90 days to vacate would prejudice both the Tenants and the Landlord as the arrears would only increase. I do not find that 90 days to terminate the tenancy is appropriate at this time, however, I also do not find that a standard 11-day order is appropriate, considering the health issues addressed by L.G.
20. 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 16, 2024 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants voids this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$18,426.00 if the payment is made on or before January 31, 2024. See Schedule 1 for the calculation of the amount owing.
- OR**
 - \$19,706.00 if the payment is made on or before February 16, 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 16, 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 16, 2024**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$13,649.38. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$42.08 per day for the use of the unit starting November 10, 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 January 20, 2024, the Tenants will start to owe interest. This will be simple interest calculated from January 21, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before February 16, 2024, then starting February 17, 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 17, 2024.

L2 Application:

10. If the Tenants successfully void the L1 portion of this order in accordance with paragraph 2 of this order, the tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
 - The Tenant shall pay to the Landlord the monthly rent due on or before the first day of the month for a 12-month period from February 1, 2024 – January 1, 2025 inclusive.
21. If the Tenants fail to comply with the conditions set out in paragraph 10 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenants. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenants.

January 9, 2024

Date Issued

Mayra Sawicki

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 17, 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	\$19,140.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$900.00
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 is entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$18,426.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before February 16, 2024

Rent Owing To February 29, 2024	\$20,420.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$900.00
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 is entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$19,706.00

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

Rent Owing To Hearing Date	\$15,678.72
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Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$900.00
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	- \$1,250.00
Less the amount of the interest on the last month's rent deposit	- \$65.34
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total amount owing to the Landlord	\$13,649.38
Plus daily compensation owing for each day of occupation starting November 10, 2023	\$42.08 (per day)

2024 ONL TB 2636 (CanLII)