



Order under Section 69 Residential Tenancies Act, 2006

Citation: Finch v Kay, 2024 ONLTB 61455

Date: 2024-08-23

File Number: LTB-L-027970-24

In the matter of: Unit 2 basement, 131 KINZIE AVE
Kitchener ON N2A2J7

Between: Adam Finch Landlords
Stephanie Finch
Michael Macdougall

And

Lindsay Kay Tenant

Adam Finch, Stephanie Finch and Michael Macdougall (the 'Landlords') applied for an order to terminate the tenancy and evict Lindsay Kay (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on July 29, 2024.

Only the Landlords Adam Finch and Micheal Macdougall attended the hearing.

As of 9:40 a.m., 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 Landlords' evidence.

Determinations:

1. The Landlords 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 \$2,175.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$71.51. This amount is calculated as follows: \$2,175.00 x 12, divided by 365 days.
5. The Tenant has paid \$700.00 to the Landlords since the application was filed.
6. The rent arrears owing to July 31, 2024 are \$12,350.00.
7. The Landlords incurred costs of \$186.00 for filing the application and are entitled to reimbursement of those costs.

8. The Landlords collected a rent deposit of \$2,175.00 from the Tenant 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.
9. Interest on the rent deposit, in the amount of \$41.86 is owing to the Tenant for the period from October 23, 2023 to July 29, 2024.
10. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including whether the Landlords 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.
11. The Landlord Micheal Macdougall testified that they have reached out multiple times but there has been no response from the Tenant. The Tenant has never paid on time since she moved in. She has not responded to any email communication either for inspection of the rental unit. The lease states email as a form of sending notices.
12. Based on the uncontested evidence and that the Tenant was not present, I do not find that delaying the termination date would be fair to the Landlords.

It is ordered that:

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**
 - \$14,711.00 if the payment is made on or before August 31, 2024. See Schedule 1 for the calculation of the amount owing.

OR

 - \$16,886.00 if the payment is made on or before September 3, 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 September 3, 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 September 3, 2024.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlords \$10,217.93. 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 Tenant. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlords compensation of \$71.51 per day for the use of the unit starting July 30, 2024 until the date the Tenant moves out of the unit.

7. If the Tenant does not pay the Landlords the full amount owing on or before September 3, 2024, the Tenant will start to owe interest. This will be simple interest calculated from September 4, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before September 3, 2024, then starting September 4, 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 September 4, 2024.

August 23, 2024

Date Issued

Sheena Brar
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 March 4, 2025 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 August 31, 2024

Rent Owing To August 31, 2024	\$15,225.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords since the application was filed	- \$700.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlords 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	\$14,711.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before September 3, 2024

Rent Owing To September 30, 2024	\$17,400.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords since the application was filed	- \$700.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlords 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	\$16,886.00

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

Rent Owing To Hearing Date	\$12,948.79
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords since the application was filed	- \$700.00
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	- \$2,175.00
Less the amount of the interest on the last month's rent deposit	- \$41.86
Less the amount the Landlords 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 Landlords	\$10,217.93
Plus daily compensation owing for each day of occupation starting July 30, 2024	\$71.51 (per day)