



Order under Section 69 Residential Tenancies Act, 2006

Citation: Sandhu v Lomoth klaehn, 2024 ONLTB 19366

Date: 2024-03-18 **File
Number:** LTB-L-081962-23

In the matter of: 4182 Highway 7
Milton, ON N0B2K0

Between: Gurparwar Singh Sandhu Landlords
Rohit Dogra
Iqbal Singh Dhanju

And

Hannah Grace Lomoth Klaehn Tenants
Isabel Alexandra Lomoth Klaehn

Gurparwar Singh Sandhu, Rohit Dogra and Iqbal Singh Dhanju (the 'Landlords') applied for an order to terminate the tenancy and evict Hannah Grace Lomoth Klaehn, Samantha Leigh Gibson and Isabel Alexandra Lomoth Klaehn (the 'Tenants') because the Tenants did not pay the rent owed.

This application was heard by videoconference on February 26, 2024.

The Landlords' representative, Shalini Puri, the Landlords, Gurparwar Singh Sandhu, Rohit Dogra and Iqbal Singh Dhanju, the Tenants' representative, Steven Jackson, and the Tenants, Hannah Grace Lomoth Klaehn, Samantha Leigh Gibson and Isabel Alexandra Lomoth Klaehn attended the hearing.

Preliminary Issues:

Removing a Tenant from the Rental Agreement

1. Tenant Samantha Leigh Gibson was a party to the rental agreement executed on March 15, 2022. It is not in dispute that Mr. Gibson never resided in the rental unit.

2. Ms. Gibson testified that on April 25, 2022, she emailed the Landlords asking to be removed from the rental agreement. At that time, the Landlords consented to removing Ms. Gibson from the rental agreement.
3. At the hearing, Tenants Hannah Grace Lomoth Klaehn, Isabel Alexandra Lomoth Klaehn and the Landlords consented to removing Ms. Gibson from the rental agreement effective April 25, 2022.
4. Since all parties agreed to the removal of Ms. Gibson from the rental agreement, the application is amended to remove her as a party.

Determinations:

5. The Landlords 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.
6. As of the hearing date, the Tenants were still in possession of the rental unit.
7. The Tenants advised the Landlords during the hearing of their intent to vacate the rental unit on March 14, 2024.
8. The lawful rent is \$5,500.00, due on the 15th day of each month.
9. Based on the Monthly rent, the daily rent/compensation is \$180.82. This amount is calculated as follows: \$5,500.00 x 12, divided by 365 days.
10. The Tenants have not made any payments since the application was filed.
11. The rent arrears owing to March 14, 2024, are \$71,500.00.
12. The amount of arrears exceeds the \$35,000.00 monetary jurisdiction of the Board as set out in section 207 of the *Residential Tenancies Act, 2006* ("the Act").
13. Proceeding with an application with the Board extinguishes any rights the Landlords may have to pursue the full amount owing at the Superior Court. The Landlords were made aware of the Board's monetary jurisdiction and chose to proceed with this application.
14. While the Board cannot order a person to pay more than \$35,000.00 in accordance with s. 207(1) of the Act, this does not apply to the "stay and pay" option set out in paragraph 2 the order below. In *Galaxy Real Estate Core Ontario LP v. Kirpichova et al.*, 2023 ONSC 4356, the Divisional Court confirmed that the Board's monetary jurisdiction does not apply to the amount the Tenant must pay if they choose to void the order and

continue the tenancy in accordance with section 74(4) of the Act. Therefore, the Tenants must pay the full arrears owing, plus the Landlords' costs, if they want to void the order and continue this tenancy.

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 \$5,500.00 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 \$207.27 is owing to the Tenants for the period from March 15, 2022, to February 14, 2024.
18. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

New Rental Agreement

19. The Tenants testified that after Ms. Gibson submitted her initial request to the Landlords by email on April 25, 2022, they requested a new rental agreement from the Landlords, which they never received.
20. The Tenants submitted that as they did not get a copy of the new lease, pursuant to section 12(4) of the Act the Tenants' obligation to pay rent was suspended
21. The Landlords testified that in the June to July 2022 period, they provided a copy of the revised lease to the Tenants, but the Tenants did not sign it. The Landlords used Authentisign, an online eSignature service, and provided a screen capture showing that Tenants Hannah Grace Lomoth Klaehn and Isabel Alexandra Lomoth Klaehn, were sent a document for their electronic signature.
22. The Landlords testified that the Tenants did not sign the document by the expiration date of June 8, 2022, at 11:59 p.m., and provided a screen capture from Authentisign in support of their testimony.
23. The Tenants testified they signed the document but did not receive confirmation of signing. When I asked whether they took a screen capture, or photo of their screen after signing the document, they advised they had not.

24. Based on the testimony and evidence provided by all parties, I am satisfied that on a balance of probabilities, the Tenants did not sign a new rental agreement with the Landlords, and as such, the Landlords could not provide a copy of a document that did not exist.
25. Although section 12(4) of the Act effects the Tenants' obligation to pay rent if a copy of the tenancy agreement is not provided within 21 days after the Tenants sign and give it to the Landlords, section 12.1(7) limits the maximum total amount of rent payments the Tenants can withhold. Section 12.1(7) states that:

The maximum total amount of rent payments that a tenant may withhold under subsection (6) is an amount equal to one month's rent.
26. Had I found that a second rental agreement did exist, and had I accepted the representative's section 12 argument, at most, the Tenants would have been permitted to withhold was one month's rent.
27. Since the Tenants owe the Landlords \$71,500 in undisputed rental arrears, deducting one months rent, would still result in total arrears well above the Board's monetary limit of \$35,000.00.

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:**
 - \$71,686.00 if the payment is made on or before March 25, 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 March 25, 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 March 25, 2024.**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$35,000.00, which represents the amount of rent owing, the application filing fee, less the rent deposit and interest on the rent deposit, up to March 14, 2024. While the total arrears owing by the Tenants exceed \$35,000.00 even after the deduction of the rent deposit,

the Board's maximum monetary jurisdiction is \$35,000.00. See Schedule 1 for the calculation of the amount owing.

6. The Tenants shall pay to the Landlord \$180.82 per day for the use of the rental unit starting March 15, 2024, until the date the Tenants move out.
7. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
8. If the Tenants do not pay the Landlord the \$35,186.00 owing on or before March 25, 2024, the Tenants will start to owe interest. This will be simple interest calculated from March 26, 2024, at 7.00% annually on the balance outstanding.
9. If the unit is not vacated on or before March 25, 2024, then starting March 26, 2024, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 March 26, 2024.

March 18, 2024

Date Issued

Ken Audziss

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 26, 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 March 29, 2024

Rent Owing To March 14, 2024	\$71,500.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlords 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 Tenant must pay to continue the tenancy	\$71,686.00

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

Rent Owing To March 14, 2024	\$71,500.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord ssince the application was filed	- \$0.00
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	- \$5,500.00
Less the amount of the interest on the last month's rent deposit	- \$207.27
Less the amount the Landlords 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 Landlords	\$65,978.73
Maximum allowable by the Board under section 207 of the Residential Tenancies Act, 2006:	\$35,186.00
Plus daily compensation owing for each day of occupation starting February 27, 2024	\$180.82 (per day)