



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Sarwar v Leslie, 2024 ONLTB 9437

Date: 2024-02-07

File Number: LTB-L-009084-23

In the matter of: 37 HAWKRIDGE TRAIL
BRAMPTON ON L6P2T4

Between: Syed Kamal Sarwar Landlords
Aneela Kamal Sarwar

And

Gary Leslie Macdonald Tenants
Michelle Gary Mcilkenny
Joshua Gary McDonald
Alexia Gary McDonald
Xavier Gary McDonald

Syed Kamal Sarwar and Aneela Kamal Sarwar (the 'Landlords') applied for an order to terminate the tenancy and evict Gary Leslie Macdonald, Michelle Gary Mcilkenny, Joshua Gary McDonald, Alexia Gary McDonald and Xavier Gary McDonald (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe (L1 application).

The Landlords also applied for an order to terminate the tenancy and evict the Tenants because the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlords or another Tenants (L2 Application).

The Landlords also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on January 22, 2024.

Only the Landlords' Legal Representative, Shahbaz Vardag, attended the hearing.

The Tenants were 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:

L1 application

1. 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.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$4,750.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$156.16. This amount is calculated as follows: \$4,750.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to January 31, 2024 are \$66,500.00.
7. This amount exceeds the jurisdiction of the Board which is \$35,000.00. As a result of proceeding with this application the Landlord cannot pursue the Tenants for the amount above \$35,000.00 that is owing in any other application at the Board or court proceeding.
8. This order terminates the tenancy and requires the Tenants to pay the amount up to the Board's monetary jurisdictional limit of \$35,000.00 plus the cost of filing the application.
9. However, as recently confirmed by the Divisional Court in *Galaxy Real Estate Core Ontario LP v. Kirpichova*, 2023 ONSC 4356, while the Board cannot order a person to pay more than \$35,000.00, this does not apply to the "stay and pay" option set out in the order below. The Tenant can choose to pay the full amount of rent, and costs owing to the Landlord if they choose not to vacate the unit. This amount is optional and only required if the Tenants elect to continue the tenancy. Therefore, the Board is not ordering this amount to be paid and is not ordering an amount that exceeds its monetary jurisdiction.
10. The Landlords incurred costs of \$186.00 for filing the application and are entitled to reimbursement of those costs.
11. The Landlords collected a rent deposit of \$4,750.00 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.
12. Interest on the rent deposit, in the amount of \$252.53 is owing to the Tenants for the period from June 1, 2020 to January 22, 2024.

13. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlords attempted to negotiate a repayment agreement with the Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
14. The Landlords own this one rental property. When the Tenants fail to pay their rent, the Landlords are forced to use their income to support the mortgage and other bills associated with the property.
15. Due to the high amount of arrears, the Landlords have struggled to pay the mortgage. The Landlord's Legal Representative submitted the Landlords were unable to make the last mortgage payment due on the property but there was no documentary evidence before me to consider.

L2 application

16. At the hearing, the Landlords requested the consent of the Board to withdraw the L2 application.
17. In accordance with subsection 200(4) of the Act, I consent to the withdrawal of the application.

It is ordered that:

1. The Landlord's L2 application is withdrawn.
2. In accordance with the L1 application, the tenancy between the Landlords and the Tenants is terminated unless the Tenants voids this order.
3. **The Tenants may void this order and continue the tenancy by paying to the Landlords or to the LTB in trust:**
 - \$71,436.00 if the payment is made on or before February 18, 2024. See Schedule 1 for the calculation of the amount owing.
4. 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 18, 2024 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
5. **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**
6. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$35,186.00. 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 owes on the rent deposit are

deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.

7. The Tenants shall also pay the Landlords compensation of \$156.16 per day for the use of the unit starting January 23, 2024 until the date the Tenants moves out of the unit.
8. If the Tenants do not pay the Landlords the full amount owing on or before February 18, 2024, the Tenants will start to owe interest. This will be simple interest calculated from February 19, 2024 at 7.00% annually on the balance outstanding.
9. 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.
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 February 19, 2024.

2024 ONL TB 9437 (CanLI)

February 7, 2024

Date Issued

Elena Jacob

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 February 18, 2024

Rent Owing To February 29, 2024	\$71,250.00
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
Total the Tenants must pay to continue the tenancy	\$71,436.00

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

Rent Owing To Hearing Date	\$65,185.52
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 of the last month's rent deposit	- \$4,750.00
Less the amount of the interest on the last month's rent deposit	- \$252.53
Amount owing to the Landlords (the Board's maximum jurisdiction)	\$35,000.00
Plus daily compensation owing for each day of occupation starting January 23, 2024	\$156.16 (per day)
Total amount owing to the Landlord	\$35,186.00*

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