



Order under Section 69 Residential Tenancies Act, 2006

Citation: Chapman v Wong, 2023 ONLTB 77906

Date: 2023-12-06

File Number: LTB-L-041625-23

In the matter of: 1708, 108 GARMENT STREET KITCHENER
ON N2G2B3

Between: Errol Chapman Landlord

And

Maceo Wong Tenants Denise Russel

Errol Chapman (the 'Landlord') applied for an order to terminate the tenancy and evict Maceo Wong and Denise Russel (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on November 20, 2023.

The Landlord, the Landlord's Legal Representative C. De Palma and the Tenant Denise Russel attended the hearing. The Tenant stated that she was representing the other Tenant as well.

Determinations:

1. The Tenant wanted to raise issues under section 82 of the *Residential Tenancies Act, 2006* ("Act") related to maintenance issues, but she did not provide disclosure to the Landlord and the Board at least seven days before the hearing as required by section 82(2) and Board Rule of Procedure 19.4.
2. The Tenant testified that she is in possession of the rental unit but does not reside there, so she did not get notification of the hearing. She only became aware of the proceedings when the Landlord's Legal Representative sent her the Notice of Hearing and evidence last week on November 13, 2023. She testified that the other Tenant also moved out of the rental unit as well around the same time as her.

3. I am satisfied that the Tenants received adequate notice of the hearing as the application and notice of hearing was mailed by the Board to the rental unit on July 09, 2023 deemed served on July 14, 2023 for both tenants. The Tenant acknowledged that she has possession of the rental unit and it is her responsibility to collect or re-direct her mail from the rental unit periodically. Therefore, I do not find she has established a reasonable explanation as to why she was unable to comply with the section 82 disclosure requirements. I advised the Tenant that I would not permit her to raise issues under section 82, but she could file her own application with the Board.
4. 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.
5. As of the hearing date, the Tenants were still in possession of the rental unit.
6. The lawful rent is \$2,250.00. It is due on the 1st day of each month.
7. Based on the Monthly rent, the daily rent/compensation is \$73.97. This amount is calculated as follows: \$2,250.00 x 12, divided by 365 days.
8. The Tenants have not made any payments since the application was filed.
9. The rent arrears owing to November 30, 2023 are \$15,750.00.
10. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. The Landlord collected a rent deposit of \$2,250.00 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.
12. Interest on the rent deposit, in the amount of \$64.26 is owing to the Tenants for the period from September 30, 2022 to November 20, 2023.
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 Landlord 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 Tenant testified that she moved out of the rental unit sometime in May 2023. She stated that the Tenants were facing a lot of difficulties with erratic water supply to the rental unit since January 2023. Two water softeners blew up and dispersing resin beads into the water supply which would clog the water outlets. It was not that there was no access to a vital service like water but instead a constant disruption to life to call a plumber to come and unclog the water outlets. The Landlord passed on the responsibility to the Condo management and did not do anything about it.

15. Since the Tenant testified that she was unsure if the issue was since resolved or not, I do not find that the Tenant could raise it under s.83 of the Act as the issue is not ongoing. The Tenant gave contradictory testimony to whether the issue was resolved or not and whether she has been back at the rental unit or not, I am not satisfied that her testimony was entirely credible.
16. The Tenant also stated that she would like to terminate the tenancy on or before November 21, 2023 and give up possession of the rental unit on behalf of both tenants.

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:**
 - \$18,186.00 if the payment is made on or before December 15, 2023. 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 December 15, 2023 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 December 15, 2023.**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$12,851.14. 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 \$73.97 per day for the use of the unit starting November 21, 2023 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before December 15, 2023, the Tenants will start to owe interest. This will be simple interest calculated from December 16, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 15, 2023, then starting December 16, 2023, 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 December 16, 2023.

December 6, 2023

Date Issued

Sheena Brar

Member, Landlord and Tenants 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 June 11, 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 December 15, 2023

Rent Owing To December 31, 2023	\$18,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord 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 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	\$18,186.00

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

Rent Owing To Hearing Date	\$14,979.40
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord 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 of the last month's rent deposit	- \$2,250.00
Less the amount of the interest on the last month's rent deposit	- \$64.26
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	\$12,851.14
Plus daily compensation owing for each day of occupation starting November 21, 2023	\$73.97 (per day)