



Order under Section 69 Residential Tenancies Act, 2006

Citation: 2568587 Ontario Ltd. O/A MIRC Investments Inc. v Murdoch, 2023 ONLTB 77236

Date: 2023-12-06

File Number: LTB-L-061136-22

In the matter of: 15A, 515 MAIN ST E HAMILTON
ON L8M1H9

Between: 2568587 Ontario Ltd. Landlord
O/A MIRC Investments Inc.

And

Douglas Ian Murdoch Tenants
Vicky Murdoch

L1 Application – Non-Payment of Rent

2568587 Ontario Ltd. O/A MIRC Investments Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Douglas Ian Murdoch and Vicky Murdoch (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

L2 Application – Persistent Late Payment of Rent

The Landlord applied for an order to terminate the tenancy and evict the Tenants because the Tenants have been persistently late in paying their rent. The Landlord also claimed compensation for each day the Tenants remained in the rental unit after the termination date.

These two applications were heard by videoconference on November 15, 2023. The Landlord's agent, Robert Cabral, and the Landlord's representative, Bryan Rubin, attended the hearing. As of 10:11 am, 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 Landlord's evidence.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before December 17, 2023.

L2 Application – Persistent Late Payment of Rent

2. On August 10, 2022, the Landlord served the Tenants an N8 notice of termination (N8) with a date of termination of October 31, 2022. The notice of termination alleges that the Tenants paid the rent late 6 times over the period of February 2022 to July 2022. I am satisfied that this N8 was properly served and complies with s. 58(2) of the Act.
3. The Landlord filed an L2 application with the Board on October 21, 2022. I am satisfied that this application complies with s. 69(1) of the Act. The Tenants were in possession of the rental unit on the day of filing, and remain in possession of the rental unit as of the day of this hearing.
4. Daily compensation, the rent deposit, and the Landlord's costs will be considered as part of the Landlord's L1 application.
5. The rent is due on the first day of each month.
6. The Landlord's representative submitted that the Tenants paid the rent late for 6 months over the 6-month period of February 2022 to July 2022. The Landlord submitted a detailed rent ledger providing specific payment information and payment dates over this period.
7. On the basis of the Landlord's uncontested evidence, I find that the Tenants have persistently failed to pay the rent on the date it was due. The rent was paid late 6 times in the 6-month period of February 2022 to July 2022.
8. After the N8 was served, over the 16-month period from August 2022 to November 2023, the Landlord's representative submitted that the Tenants paid the rent late every month during this period. The Landlord's representative submitted further that, not only was the rent late, but no rent has been received at all by the Landlords since June 2022. The Landlord submitted a rent ledger that showed no rent payments from the Tenants from June 2022 to the day of the hearing.
9. On the basis of the Landlord's uncontested evidence, I find that the Tenants paid the rent late every month over the 16-month period from August 2022 to November 2023 by not providing a single rent payment over this period.
10. The Landlord's representative submitted that before October 2022 the Landlord sent a letter to the Tenants informing the Tenants that the rent had to be paid on-time, but there was no response from the Tenants. The representative stated that the Landlord more recently sent a letter to the Tenants on November 8, 2023 regarding the late rent payments, but again, there was no response from the Tenants.

11. The Landlord's representative submitted further that the late rent payments increase the financial burden on the Landlord, and make it more difficult for the Landlord to meet financial obligations associated with the tenancy.

Relief from Eviction

12. 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.
13. Over the 22-month period from February 2022 to the date of this hearing the Tenants paid the monthly rent late on 22 occasions. I am satisfied that if the rent is not paid on time the Landlord encounters financial difficulties in paying their own tenancy related expenses on time. I am also satisfied that, given the long and consistent record of late rent payments, and no effort by the Tenants to make rent payments since June 2022, providing the Tenants with relief from eviction on the condition of on-time rent payments would be prejudicial to the Landlord.
14. The Landlord's representative and agent were not aware of any circumstances that should be considered in a determination of whether to provide the Tenants with eviction relief, nor were the Tenants or the Tenants' representative present at the hearing to provide submissions with respect to the Tenants' relief from eviction. For these reasons, and those provided in paragraph 13 above, it would be unfair to the Landlord to grant the Tenants with eviction relief.
15. As a result, the requested eviction order shall be issued based on the Landlord's L2 application for persistent late payment of rent.

L1 Application – Non-Payment of Rent

16. As an eviction order is being issued based on the Landlord's L2 application, it is not necessary to consider the request for eviction in the Landlord's L1 application. The Tenants will be ordered to pay the rent arrears owing less the last month's rent deposit and interest owing on the deposit pursuant to s. 86, s. 87(1)(a) and s. 106 of the Act.
17. As of the hearing date, the Tenants were still in possession of the rental unit.
18. The lawful rent is \$1,095.00. It is due on the 1st day of each month.
19. Based on the monthly rent, the daily rent/compensation is \$36.00. This amount is calculated as follows: \$1,095.00 x 12, divided by 365 days.
20. The Tenants have not made any payments since the application was filed.
21. The rent arrears owing to November 30, 2023 are \$19,895.00.
22. The Landlord incurred costs of \$186.00 for filing the L1 and L2 applications and is entitled to reimbursement of those costs.

23. The Landlord collected a rent deposit of \$1,095.00 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.
24. Interest on the rent deposit, in the amount of \$64.31 is owing to the Tenants for the period from November 20, 2019 to November 15, 2023.
25. This order contains all of the reasons for the decision within it and no further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before December 17, 2023.
2. The Tenants shall pay to the Landlord \$18,366.69. 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.
3. The Tenants shall also pay the Landlord compensation of \$36.00 per day for the use of the unit starting November 16, 2023 until the date the Tenants move out of the unit.
4. If the Tenants do not pay the Landlord the full amount owing on or before December 17, 2023, the Tenants will start to owe interest. This will be simple interest calculated from December 18, 2023 at 7.00% annually on the balance outstanding.
5. If the unit is not vacated on or before December 17, 2023, then starting January 3, 2024 the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 January 3, 2024.

December 6, 2023

Date Issued

Frank Ebner

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 July 3, 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 as the tenancy is terminated.

Rent Owing To Hearing Date	\$19,340.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	- \$1,095.00
Less the amount of the interest on the last month's rent deposit	- \$64.31
Less the amount the Landlord 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 Landlord	\$18,366.69
Plus daily compensation owing for each day of occupation starting November 16, 2023	\$36.00 (per day)

2023 ONLTB 77236 (CanLII)