



Order under Section 69 Residential Tenancies Act, 2006

Citation: Ma v Genereaux, 2023 ONLTB 75249

Date: 2023-11-21

File Number: LTB-L-063124-22

In the matter of: 5774 RAMSEY ROAD
NIAGARA FALLS ON L2E6X8

Between: Kai Ma Landlord

And

James Genereaux Tenants Ashley Barrons

Kai Ma (the 'Landlord') applied for an order to terminate the tenancy and evict James Genereaux ("JG") and Ashley Barrons ("AB") (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe (L1 application).

The Landlord also applied for an order to terminate the tenancy and evict the Tenants for persistent late payment of rent (L2 application).

This application was heard by videoconference on November 7, 2023.

The Landlord, the Landlord's Legal Representative, Angela Browne, the Landlord's wife, Qifang Cheng, and the Tenant JG attended the hearing.

Determinations:

1. Wyatt Barrons and Lincoln Barrons are minors and are therefore removed as tenants on the application.
2. As of the hearing date, the Tenants were still in possession of the rental unit.

L1 application

3. 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.

4. The lawful rent is \$1,680.00. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$55.23. This amount is calculated as follows: \$1,680.00 x 12, divided by 365 days.
6. The Tenants has not made any payments since the application was filed.
7. The rent arrears owing to November 30, 2023 are \$25,280.00.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. It was uncontested the Landlord does not hold a last month's rent deposit and the application is amended to reflect the same.

L2 application

10. On October 4, 2022, the Landlord served the Tenant with an N8 notice of termination with a termination date of July 31, 2023. The N8 notice alleges that the Tenants have persistently paid the rent late. In the reasons and details, the N8 states that the rent for August 2022 was partially paid after August 1, 2022, and the Tenants did not pay any rent for September and October 2022.
11. I am not satisfied that just three months of late or non-payment constitutes persistent late payment of rent. Therefore, the L2 application must be dismissed.

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'), 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.
13. AB is currently living in a hotel with her two children. JG continues to reside in the rental unit. JG testified the windows in the rental unit are rotting out and the doors don't seal properly which causes the unit to be cold in the winter months. The Tenants did not support any documentary evidence to support the claim of the condition of the apartment. The Tenants can file their own application with the Board to address these concerns.
14. The Landlord testified he inspected the windows in the spring of 2023 and did not find the windows in need of repair.
15. The Tenants requested an order terminating the tenancy within thirty days. JG testified the Tenants would need thirty days to find alternative housing, pack and move their belongings

to storage or a new apartment. His car does not work and needs to be fixed prior to him being able to move. The Tenants have begun searching for apartments elsewhere.

16. The Landlord requested a standard order requiring the Tenants vacate the rental unit in 11 days from the date of the order. The Tenants' lack of payment has affected the Landlord's ability to pay the mortgage on the property as well as other bills for the property like water and taxes.
17. I find it would be unfair to delay the eviction by 30 days as requested by the Tenants. The tenancy began in August 2022. The Tenants paid \$1,600.00 toward rent in August of 2022 and have not paid any money to the Landlord since, resulting in substantial arrears. The Landlord does not hold a last month's rent deposit, meaning a 30-day delay would result in increased arrears owing to the Landlord.

It is ordered that:

1. The Landlord's L2 application is dismissed.
2. In accordance with the L1 application, the tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
3. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$25,466.00 if the payment is made on or before November 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$27,146.00 if the payment is made on or before December 2, 2023. 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 December 2, 2023 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 does not pay the amount required to void this order the Tenants must move out of the rental unit on or before December 2, 2023**
 6. If the Tenants does not void the order, the Tenants shall pay to the Landlord \$24,172.61. 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.
 7. The Tenants shall also pay the Landlord compensation of \$55.23 per day for the use of the unit starting November 8, 2023 until the date the Tenants moves out of the unit.

8. If the Tenants does not pay the Landlord the full amount owing on or before December 2, 2023, the Tenants will start to owe interest. This will be simple interest calculated from December 3, 2023 at 7.00% annually on the balance outstanding.
9. If the unit is not vacated on or before December 2, 2023, then starting December 3, 2023, the Landlord 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 Landlord on or after December 3, 2023.

November 21, 2023

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 June 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 to void the eviction order and continue the tenancy if the payment is made on or before November 30, 2023

Rent Owing To November 30, 2023	\$25,280.00
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	\$25,466.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before December 2, 2023

Rent Owing To December 31, 2023	\$26,960.00
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	\$27,146.00

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

Rent Owing To Hearing Date	\$23,986.61
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	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord	\$24,172.61
Plus daily compensation owing for each day of occupation starting November 8, 2023	\$55.23 (per day)