



Order under Section 69 Residential Tenancies Act, 2006

Citation: Tabrizi v Ditaranto, 2023 ONLTB 75891

Date: 2023-11-20

File Number: LTB-L-050721-23

In the matter of: 5 RUGMAN CRES
SPRINGWATER ON L9X2A2

Between: Alireza Tabrizi Landlord

And

Rita Ditaranto and Carlo Losi Tenants

Alireza Tabrizi (the 'Landlord') applied for an order to terminate the tenancy and evict Rita Ditaranto and Carlo Losi (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

This application was heard by videoconference on November 8, 2023.

The Landlord and the Tenant Carlo Losi attended the hearing. Mr. Losi spoke on behalf of his wife, Rita, Ditaranto, the other tenant.

Adjournment Request Denied

1. The Tenants requested an adjournment to meet with a lawyer. The Landlords opposed the adjournment. The Tenants indicated that they have an appointment scheduled for this afternoon at 1:00 p.m. This was a half day block scheduled to end at 1:00 p.m. The Notice of Hearing was served by the Board on August 9, 2023 and the Tenants acknowledged receiving the notice around that time. The Tenants did not get legal advice sooner because they did not have sufficient funds for the \$3,000.00 retainer required by their chosen lawyer.
2. The Notice of Hearing package includes information about how to obtain legal advice through Legal Aid prior to the Hearing. The Tenants had 3 months to obtain legal counsel. Although I appreciate the Tenants wanted the services of a specific lawyer, there is no evidence before me that their preferred lawyer possesses unique skills or experience which could not be provided by other legal representatives, including those available at no charge through Legal Aid. In my view, delaying the proceeding in this context will be prejudicial to the Landlord given the growing arrears.
3. Notably, this is a simple application where the only question is whether the Tenant paid the rent owing, failing which termination may be granted to the Landlord. That is, most of this order relates to factual determinations regarding rent payment. Additionally, Tenant Duty Counsel was also available at the hearing. The Board's Guideline 1 provides parties with information about how adjournment requests will be handled.

4. Given these considerations, the adjournment request was denied and the matter was stood down to allow the Tenants to speak with Tenant Duty Counsel before proceeding.

Agreed Upon Termination

1. The Parties agreed during the hearing to a termination of the Tenancy on November 30, 2023.

Determinations:

N4 was served to Tenants

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice) on June 2, 2023. 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. At times Mr. Losi indicated that he had not received the N4. However, at other times he acknowledged receiving it. His testimony was inconsistent in this, and other regards.
3. The Landlord testified that he served the Tenants by Express post and sent a copy of the notice by email. This was supported by an Express Post receipt dated June 2, 2023, the date the Landlord says he served the N4. I find on a balance of probabilities the Landlord served the N4 as set out in the Certificate of Service, that is by mail (or Xpress Post) on June 2, 2023.
4. As of the hearing date, the Tenants were still in possession of the rental unit.
5. At the hearing the Tenants submitted that the lawful rent changed was reduced from \$4,000.00 to \$3,500.00 in July 2022 when the initial lease term expired. This was disputed by the Landlord who maintained the rent has remained at \$4,000.00. The Tenants wished to provide the Board with evidence challenging the lawful rent claimed in this application and explained that while they were able to communicate in English and understood the language, they needed more time to comprehend what was required of them for this hearing. As such, I allowed the Tenants more time to file evidence. The parties were given until Thursday, November 9, 2023 to file documents with the Board in order for me to assess relevance and admit them as evidence. The Tenants failed to file anything with the Board or serve anything on the Landlord by November 9, 2023.
6. In any event, in a previous application to the Board, LTB Order LTB-L-070786-23 issued in May, 2023, subsequent to the date the Tenant claims the rent was reduced, determined the lawful monthly rent to be \$4,000.00. In other words, this issue is *res judicata*.
7. As I have no evidence before me of a subsequent change in rent and the Board already made a finding regarding lawful rent in May, I cannot re-adjudicate the matter. The Tenants wish to review that decision. However, a review of a previous decision of the Board is not properly before me. No request to review has been filed with the Board to date. I accept the finding of fact already made by the Board that the lawful rent is \$4,000.
8. Based on the Monthly rent, the daily rent/compensation is \$131.51. This amount is calculated as follows: \$4,000.00 x 12, divided by 365 days.

Arrears Amount

9. The Tenants have not made any payments since the application was filed. The Tenants referenced amounts between \$15,000 and \$19,000 being taken from their account by the Landlord in June when their bank account was frozen. The Landlord advised that \$13,267.88 was garnished in June relating to previous LTB Order LTB-L-070786-22. I accept that the garnished amount relates to the previous order and is, in fact, less than the amount of arrears owing in that order. The Tenants confirmed that they did not make any payments directly to the Landlord for rent from June for arrears relating to this application and since this application was filed. I proceeded to issue an order for arrears of rent from June 1 to the date of this order.
10. The rent arrears owing from June 1 to November 30, 2023 is \$24,000.00.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$4,000.00 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.
13. Interest on the rent deposit, in the amount of \$201.70 is owing to the Tenants for the period from April 27, 2021 to November 8, 2023.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated on November 30, 2023
2. The Tenants shall pay \$19,984.30 to the Landlords on or before February 28, 2024.
3. The Tenants shall also pay the Landlord compensation of \$131.51 per day for the use of the unit starting December 1, 2023 until the date the Tenants moves out of the unit.
4. If the Tenants do not pay the Landlord the full amount owing on or before February 28, 2024, the Tenants will start to owe interest. This will be simple interest calculated from February 28, 2024 at 7.00% annually on the balance outstanding.
5. If the unit is not vacated on or before November 30, 2023, then starting December 1, 2023, 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 December 1, 2023.

November 20, 2023
Date Issued

 Dawn Carr
 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 2, 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

Rent Owing To November 30, 2023	\$24,000.00
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$4,000.00
Less the amount of the interest on the last month's rent deposit	- \$201.70
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Total the Tenants must pay to continue the tenancy	\$19,984.30
Plus daily compensation owing for each day of occupation starting December 1, 2023	\$131.51 (per day)