



Order under Section 69 Residential Tenancies Act, 2006

Citation: Eid v Inbamohan, 2023 ONLTB 74568

Date: 2023-11-17

File Number: LTB-L-034360-23

In the matter of: 301, 349 Rathburn Road West
Mississauga Ontario L5B0G9

Between: Nermine Eid and Ayman Radwan

Landlords

And

Nagendran Inbamohan and Ramya
Rajendran

Tenants

Nermine Eid and Ayman Radwan (the 'Landlords') applied for an order to terminate the tenancy and evict Nagendran Inbamohan and Ramya Rajendran (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on September 28, 2023.

The Landlords, the Landlords' legal representative, Reginald Bent, and the Tenants attended the hearing.

Determinations:

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 \$2,500.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$82.19. This amount is calculated as follows: \$2,500.00 x 12, divided by 365 days.
5. The Tenants have paid \$9,925.00 to the Landlords since the application was filed.
6. The rent arrears owing to September 30, 2023 are \$3,090.00.

7. The Landlords incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlords collected a rent deposit of \$1,750.00 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.
9. Interest on the rent deposit, in the amount of \$21.70 is owing to the Tenants for the period from April 1, 2023 to September 28, 2023.
10. There were two issues that the Tenants raised. The first being that there was an increase of rent that was not done in accordance with section 119 of the *Residential Tenancies Act, 2006* (the "Act"). The second being that the rental amount that they are being charged was too high and unfair.
11. The Tenants testified that they moved into the rental unit in January of 2021. The unit was sold to new Landlords sometime after that and in May 2021, the new owners asked the Tenants to pay more money each month for rent. There is no evidence to support this claim. In fact, the Tenants submitted a copy of a lease from January 2021 between them and the original owners and another lease signed in May of 2021 with the new owners showing the same amount of monthly rent that was to be paid in the amount of \$1,750.00.
12. Then in April of 2022, it is undisputed the Landlords and Tenants agreed to raise the rent to \$1,785.00, which was more than 12 months since the start of their tenancy. The Tenants paid this amount for 1 year until they were served an N2 Notice of Rent Increase- Unit Partially exempt on November 23, 2022 to increase the rent to \$2,500.00 starting April 1, 2023. There was no dispute that the unit was partially exempt from the guideline rent increases under the Act. The Tenants started to pay \$200 more a month for rent but did not wish to pay the \$2,500.00 as they were not satisfied that this amount was appropriate compared to other units in the area. This is the cause of the rent arrears.
13. Subsection 136(1) of the Residential Tenancies Act, 2006 (the 'Act') deems rent charged for one or more years lawful unless an application is made within a year of when the rent was first charged challenging the lawfulness of this rent. Additionally, section 135.1 deems a rent increase that would otherwise be void to not be void if the tenant has paid the increased rent for 12 consecutive months. This means that I can't consider the Tenants' submissions regarding validity of rent increases prior to April 2022.
14. Since the N2 Notice was served in accordance with the Act and since the Tenants do not dispute that the unit is exempted under section 6.1 of the Act, I find that the lawful monthly rent is \$2,500.00 as of April 1, 2023.
15. The Tenants' second issue was the amount of rent being charged for the unit per month and they asked me to decide what a fair amount for the rental unit was. I advised the Tenants that the Board does not have the jurisdiction to determine what "fair market value" of a rental unit is and that I could not make an order with such a determination.

Relief from Eviction

16. The Tenants wish to preserve the tenancy. They did not propose any form of payment plan to pay back the arrears but stated that they could afford the monthly rent going forward. They asked to postpone the eviction for six months as they have young children who attend school in the area.
17. 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 not be unfair to postpone the eviction until November 30, 2023 pursuant to subsection 83(1)(b) of the Act. The Tenants fell into arrears due to a genuine misunderstanding about the law. The Tenants continued to pay what they believed to be the lawful rent plus an additional \$200.00 a month.
18. The eviction is being postponed to provide the Tenants with time to find new living arrangements or to pay back the arrears and void this order. Considering all of the above, it would be fair to postpone the eviction to November 30, 2023 and it would be unfair to postpone the eviction further.

It is ordered that:

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**
 - \$8,291.00 if the payment is made on or before November 30, 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 November 30, 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 November 30, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$1,320.62. 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 owe on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlords compensation of \$82.19 per day for the use of the unit starting September 29, 2023 until the date the Tenants move out of the unit.

7. If the Tenants do not pay the Landlords the full amount owing on or before November 21, 2023, the Tenants will start to owe interest. This will be simple interest calculated from November 22, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 30, 2023, then starting December 1, 2023, the Landlords 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 Landlords on or after December 1, 2023.

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

November 17, 2023

Date Issued

Colin Elsby

Member, Landlord and Tenant Board

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 1, 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 CALCULTIONS

2023 ONLTB 74568 (CanLII)

Rent Owing To Hearing Date	\$12,816.32
Application Filing Fee	\$201.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$9,925.00
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	- \$1,750.00
Less the amount of the interest on the last month's rent deposit	- \$21.70
Less the amount the Landlords owe the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00

Total amount owing to the Landlords	\$1,320.62
Plus daily compensation owing for each day of occupation starting September 29, 2023	\$82.19 (per day)

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	\$18,015.00
Application Filing Fee	\$201.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$9,925.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlords owe the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$8,291.00

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

2023 ONL TB 74568 (CanLI)