



Order under Section 69 Residential Tenancies Act, 2006

Citation: Billard v Gauthier, 2023 ONLTB 75650

Date: 2023-11-16

File Number: LTB-L-057097-23

In the matter of: 366 NINTH ST W
CORNWALL ON K6J3A7

Between: Alain Billard, Cailey Alexander-Orel and Landlords
Rene Stephen Klein-Horsman

And

Shannon Gauthier and Steven O'neil Tenants

Alain Billard, Cailey Alexander-Orel and Rene Stephen Klein-Horsman (the 'Landlords') applied for an order to terminate the tenancy and evict Shannon Gauthier and Steven O'Neil (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on October 5, 2023.

The Landlord, Allan Billard, the Landlords legal Representative, James Moak, and the Tenants attended the hearing.

Determinations:

Preliminary Issue- section 82 issues

1. At the hearing, the Tenants sought to raise several issues under section 82 of the Residential Tenancies Act, 2006 (the 'Act'). The Tenants acknowledged that they did not provide the Landlords or the Board with a written description of each issue they intended to raise under section 82 as required under section 82 of the Act and Rule 19.4 of the Board's Rules of Procedure. The Tenants also provided no evidence that they were unable to comply with the disclosure requirements and as a result, the Tenants were not permitted to raise any issues under section 82 of the Act. The Tenants still have an opportunity to bring their own application against the Landlords to address the issues they sought to raise at this hearing under section 82.

The N4 Notice

2. The Landlords served the Tenants with a valid Notice to End Tenancy Early for Non-payment 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.

3. As of the hearing date, the Tenants were still in possession of the rental unit.
4. The lawful rent is \$2,152.50. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$70.77. This amount is calculated as follows: \$2,152.50 x 12, divided by 365 days.
6. The Tenants have not made any payments since the application was filed.
7. The rent arrears owing to October 31, 2023 are \$23,467.50.
8. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlords collected a rent deposit of \$2,100.00 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.
10. The Tenants are seeking to preserve the tenancy. The Tenants refused to offer any form of payment plan and refused to pay the arrears or any rent going forward unless their s.82 issues were addressed. The Tenants then asked for 3 months to vacate the unit because they have children who are aged 9, 11, 15, and 16. The mere fact that someone has children is not, in my view, a reason to delay eviction for 3 months. In the circumstances, I do not find a delay to be appropriate.
11. 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 Landlords 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.

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:**
 - \$25,806.00 if the payment is made on or before November 27, 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 27, 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 27, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$19,754.85. 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 owes 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 \$70.77 per day for the use of the unit starting October 6, 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 27, 2023, the Tenants will start to owe interest. This will be simple interest calculated from November 28, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 27, 2023, then starting November 28, 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 November 28, 2023.

2023 ONLTB 75650 (CanLII)

November 16, 2023

Date Issued

Colin Elsby

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 May 28, 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 27, 2023

Rent Owing To November 30, 2023	\$25,620.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords 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 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	\$25,806.00

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

Rent Owing To Hearing Date	\$21,668.85
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords 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	- \$2,100.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
Less the amount the Landlords owes 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	\$19,754.85
Plus daily compensation owing for each day of occupation starting October 6, 2023	\$70.77 (per day)

