



Order under Section 69 Residential Tenancies Act, 2006

Citation: Nobakht v Van Dyk et al, 2023 ONLTB 74217

Date: 2023-11-10

File Number:
LTB-L-014700-23

In the matter of: 26 AISHFORD RD
BRADFORD ON L3Z3E2

Between: Mohammad Nobakht Landlord

And

Krista Van Dyk and Gerrit Van Dyk Tenants

Mohammad Nobakht (the 'Landlord') applied for an order to terminate the tenancy and evict Krista Van Dyk and Gerrit Van Dyk (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on June 19, 2023. The Landlord and their legal representative Reyhanah Lajevardi attended the hearing. In addition, both Tenants attended the hearing.

Determinations:

1. 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.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$3,100.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$101.92. This amount is calculated as follows: \$3,100.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to June 30, 2023 are \$18,600.00.

7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$3,100.00 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.
9. Interest on the rent deposit, in the amount of \$42.68 is owing to the Tenants for the period from December 1, 2022 to June 19, 2023.
10. At the hearing, the Landlord's representative submitted that the Landlord is on WSIB and the arrears are causing substantial prejudice.
11. The Tenant Krista Van Dyk testified that she was originally laid off from work but she is currently working three-days a week. Further, Ms. Van Dyk testified about illness in the family and that the family was receiving disability. The household contains three (3) children living there – a 2 year old, 7 year old, and 16 year old. The Tenants could not demonstrate any concrete plan on how they intend to pay the rent arrears. The Tenants proposed repaying \$1,550.00 on top of their rent, however the Landlord rejected that plan.
12. While the Tenants are now back working, they have not paid any rent arrears up to the date of the hearing. Given the amount of arrears as of the date of the hearing, and weighting the prejudice of the parties, I am not satisfied that this tenancy is viable.
13. 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 Tenant, 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 Landlord 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 Landlord or to the LTB in trust:**
 - \$34,286.00 if the payment is made on or before November 21, 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 Tenant has paid the full amount owing as ordered plus any additional rent that became due after November 21, 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 does not pay the amount required to void this order the Tenants must move out of the rental unit on or before November 21, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$14,479.80. 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.

6. The Tenants shall also pay the Landlord compensation of \$101.92 per day for the use of the unit starting June 20, 2023 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord 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 21, 2023, then starting November 22, 2023, the Landlord 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 Landlord on or after November 22, 2023.

2023 ONL TB 74217 (CanLII)

November 10, 2023

Date Issued

André-Paul Baillargeon-Smith

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 22, 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 21, 2023

Rent Owing To November 30, 2023	\$34,100.00
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 are entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$34,286.00

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

Rent Owing To Hearing Date	\$17,436.48
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	- \$3,100.00
Less the amount of the interest on the last month's rent deposit	- \$42.68
Less the amount the Landlord 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 Landlord	\$14,479.80
Plus daily compensation owing for each day of occupation starting June 20, 2023	\$101.92 (per day)