



Order under Section 69 Residential Tenancies Act, 2006

Citation: CAPREIT Limited Partnership v The Estate of Lorna Bradbury, 2023 ONLTB 72925

Date: 2023-11-07

File Number: LTB-L-043383-23

In the matter of: 116, 4113 ASH CRES
Severn ON L3V0V1

Between: CAPREIT Limited Partnership Landlord

And

The Estate of Lorna Bradbury Tenant

CAPREIT Limited Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict the Estate of Lorna Bradbury (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 23, 2023.

Only the Landlord's representative Crystal Hosannah attended the hearing.

As of 2:27pm, the Tenant, was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Preliminary Matters:

I. At the hearing the Landlord's Legal Representative testified that the Tenant passed away on January 8, 2022. The Landlord's Legal Representative advised that the Landlord was told of the death of the Tenant by the Tenant's family and that the Landlord has been in touch with the family several times and at this time they have been advised by the Tenant's sister and daughter that they do not have the funds to pay the arrears of rent that were owing.

The Landlord's Legal Representative requested that the Application be amended to properly reflect the Tenant as "the Estate of Lorna Bradbury" and we consented to the amendment of the Application.

II. The Landlord's Legal Representative testified that the Tenant's estate is still in possession of the rental unit and requested consent of the Board to proceed with the application. They testified that the tenancy is in relation to a land lease and therefore pursuant to section 163 of the *Act*, section 92 of the *Act* terminating a tenancy 30 days after the date of death of a Tenant does not apply. They therefore seek arrears of rent to the date of the hearing as the tenancy has continued.

Pursuant to section 2 of the *Act*, the definition of "tenant" "...includes the tenant's heirs, assigns and personal representatives...". We therefore find that there is still a valid tenancy as the estate of the Tenant is in possession of the rental unit and has been named in the Application. As noted above, the Landlord's Legal Representative indicated that there are on-going discussions with the estate and the estate is aware of the rent arrears and the hearing. We are satisfied that all parties have notice of the hearing and on this basis the matter proceeded to be heard.

Determinations:

1. The Landlord served the Tenant with a valid N4 Notice. The Tenant 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 Tenant was still in possession of the rental unit.
3. The lawful rent is \$514.86. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$16.93. This amount is calculated as follows: $\$514.86 \times 12$, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to October 31, 2023 are \$4,095.44.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.
9. We 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 Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**

- \$4,795.62 if the payment is made on or before November 18, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenant 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 18, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
 4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before November 18, 2023**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$4,177.37. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
 6. The Tenant shall also pay the Landlord compensation of \$16.93 per day for the use of the unit starting October 24, 2023 until the date the Tenant moves out of the unit.
 7. If the Tenant does not pay the Landlord the full amount owing on or before November 18, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 19, 2023 at 7.00% annually on the balance outstanding.
 8. If the unit is not vacated on or before November 18, 2023, then starting November 19, 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 19, 2023.

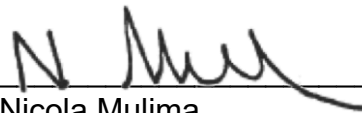
2023 ONL TB 72925 (CanLII)

November 7, 2023

Date Issued



Brett Lockwood
Member, Landlord and Tenant Board



Nicola Mulima
Vice Chair, 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 19, 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before November 18, 2023

Rent Owing To November 30, 2023	\$4,609.62
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant are entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$4,795.62

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

Rent Owing To Hearing Date	\$3,991.37
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant 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 Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant are entitled to	- \$0.00
Total amount owing to the Landlord	\$4,177.37
Plus daily compensation owing for each day of occupation starting October 24, 2023	\$16.93 (per day)