



Order under Section 69 Residential Tenancies Act, 2006

Citation: MEILIN INVESTMENTS LTD v Martin, 2023 ONLTB 68020

Date: 2023-10-20

File Number: LTB-L-055099-22

In the matter of: 493 JOSEPHINE AVE
WINDSOR ON N9B2K9

Between: MEILIN INVESTMENTS LTD Landlord

And

Jacqueline Martin Tenants
Jacob Sharpe
Jazmyn Sharpe

MEILIN INVESTMENTS LTD (the 'Landlord') applied for an order to terminate the tenancy and evict Jacqueline Martin, Jacob Sharpe and Jazmyn Sharpe (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe (L1 Application).

The Landlord also applied for an order to terminate the tenancy and evict the Tenants because the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex have substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant. The Landlord also applied for an order requiring the Tenants to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenants' failure to pay utility costs they were required to pay under the terms of the tenancy agreement (L2 Application)

This application was heard by videoconference on September 21, 2023.

The Landlord's Legal Representative, Yunqiao Zhang and the Landlord's Property Manager, Xunhua Jiang, and the Tenants, Jacqueline Martin and Jacob Sharpe, attended the hearing.

Determinations:

L1 Application

1. The Landlord 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.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$1,500.00. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$49.32. This amount is calculated as follows: \$1,500.00 x 12, divided by 365 days.
5. The Tenants have paid \$10,150.00 to the Landlord since the application was filed.
6. The rent arrears owing to September 30, 2023 are \$8,950.00.
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 \$1,500.00 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 \$59.20 is owing to the Tenants for the period from August 17, 2020 to September 21, 2023.

L2 Application

10. On July 15, 2022, the Landlord served the Tenants with a N5 Notice alleging that the Tenants failed to pay the utility bill from Enbridge Gas.
11. Pursuant to section 68(1) of the Act, the Landlord served the Tenants with a second N5 Notice on September 6, 2022 alleging that the Tenants failed to pay the utility bill from Enbridge Gas.
12. It was undisputed that the Tenants have not paid the Enbridge Gas bill. The Tenants take the position that they are not required to pay the Enbridge Gas bill as the tenancy agreement indicates that gas is included in the rent.
13. A copy of the tenancy agreement was submitted into evidence. In paragraph 6, page 3 of the tenancy agreement, gas is checked off as a service that is included in the lawful rent. In paragraph 6, page 4 of the tenancy agreement, it is noted that electricity, heat, and water are the responsibility of the Tenants.
14. The Landlord did not explain the discrepancy in paragraph 6 of the tenancy agreement but indicated that the Tenants are responsible for the Enbridge Gas bill.
15. I find it reasonable for the Tenants to understand the terms of the tenancy agreement as having gas included in the rent and that they were not responsible to pay for it separately. As the applicant, the Landlord bears the burden of proving their claim on a balance of probabilities. I find the Landlord has failed to sufficiently establish that the Tenants were responsible for the Enbridge Gas bill, separate and apart from their rent. Therefore, I cannot find that the Tenants' failure to pay the bill constitutes a substantial interference. Accordingly, the Landlord's L2 application is dismissed.

Section 83 considerations

16. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

17. The Tenants requested the Board exercise its discretion in this case by allowing them to remain in possession of the rental unit. The Tenants proposed to pay \$300.00 a month toward the arrears on top of the monthly rent.
18. I do not find the Tenants' proposal to be reasonable. The Tenants' proposal would result in a payment plan of nearly three years. The arrears are substantial, and I find the duration of the proposed payment plan would be prejudicial to the Landlord.

It is ordered that:

1. The L2 application is dismissed.
2. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
3. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$10,636.00 if the payment is made on or before October 31, 2023. See Schedule 1 for the calculation of the amount owing.
4. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants has paid the full amount owing as ordered plus any additional rent that became due after October 31, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
5. **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 October 31, 2023**
6. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$7,112.52. 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.
7. The Tenants shall also pay the Landlord compensation of \$49.32 per day for the use of the unit starting September 22, 2023 until the date the Tenants moves out of the unit.
8. If the Tenants do not pay the Landlord the full amount owing on or before October 31, 2023, the Tenants will start to owe interest. This will be simple interest calculated from November 1, 2023 at 7.00% annually on the balance outstanding.
9. If the unit is not vacated on or before October 31, 2023, then starting November 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 1, 2023.

October 20, 2023
Date Issued

 Teresa Hunt
 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 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.

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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 October 31, 2023

Rent Owing To October 31, 2023	\$20,600.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$10,150.00
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 is entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$10,636.00

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

Rent Owing To Hearing Date	\$18,635.72
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$10,150.00
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	- \$1,500.00
Less the amount of the interest on the last month's rent deposit	- \$59.20
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total amount owing to the Landlord	\$7,112.52
Plus daily compensation owing for each day of occupation starting September 22, 2023	\$49.32 (per day)