



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: AMSTAR POOL I LP v Berry, 2023 ONLTB 65549

Date: 2023-10-05

File Number: LTB-L-018737-23

In the matter of: 2002, 2737 KIPLING AVE
Toronto ON M9V4C3

Between: AMSTAR POOL I LP Landlord

And

Georgia Berry Tenants
Olna Demosthenes

AMSTAR POOL I LP (the 'Landlord') applied for an order to terminate the tenancy and evict Georgia Berry and Olna Demosthenes (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on September 14, 2023.

Only the Landlord’s legal representative Sofia Enriquez attended the hearing.

As of 1:57p.m., the Tenants were 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.

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. At the hearing, the Landlord’s legal representative advised that the lawful rent is \$1,709.86. I have exercised my discretion under section 201(1) of the Residential Tenancies Act, 2006 (the “Act”) to amend the application to correct that the lawful rent is \$1,709.86. While the Landlord’s application had incorrectly referenced that the rent was \$1,613.40, the total rent arrears claimed for the period from February 1, 2023, to March 31, 2023, were calculated on the lawful rent of \$1,709.86. The N4 Notice also mentions that the rent for the period of February 1, 2023, is \$1,709.86. There is no prejudice to the Tenants from this amendment

because it does not affect the validity of the N4 Notice or the total arrears being claimed on the application.

3. As of the hearing date, the Tenants were still in possession of the rental unit.
4. The lawful rent is \$1,709.86. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$56.21. This amount is calculated as follows: \$1,709.86 x 12, divided by 365 days.
6. The Tenants paid \$11,974.13 to the Landlord since the application was filed.
7. The rent arrears owing to September 30, 2023, are \$1,703.79.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$1,664.34 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. Interest on the rent deposit, in the amount of \$29.30 is owing to the Tenants for the period from January 1, 2023, to September 14, 2023.
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 Landlord 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. The Landlord's legal representative is not aware of any circumstances which the Board should be made aware of whether to refuse or delay the eviction.

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:
 - \$3,599.65 if the payment is made on or before October 16, 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 October 16, 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 October 16, 2023
5. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the arrears of rent, compensation, and the cost of filing the application the

Landlord is entitled to by \$726.77. See Schedule 1 for the calculation of the amount owing. However, the Landlord is authorized to deduct from the amount owing to the Tenants \$56.21 per day for compensation for the use of the unit starting September 15, 2023, until the date the Tenants move out of the unit.

6. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
7. If the unit is not vacated on or before October 16, 2023, then starting October 17, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. 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 October 17, 2023.

October 5, 2023

Date Issued

Inderdeep Padda

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 April 17, 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 October 16, 2023

Rent Owing To October 31, 2023	\$15,387.78
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$11,974.13
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 Tenant are entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$3,599.65

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

Rent Owing To Hearing Date	\$12,755.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$11,974.13
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	- \$1,664.34
Less the amount of the interest on the last month's rent deposit	- \$29.30
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	\$(726.77)
Plus, daily compensation owing for each day of occupation starting September 15, 2023	\$56.21 (per day)