



Order under Sections 69 and 88.2 Residential Tenancies Act, 2006

Citation: Perino v Buta, 2023 ONLTB 64729

Date: 2023-10-03

File Number:
LTB-L-015702-23

2023 ONLTB 64729 (CanLII)

In the matter of: A, 133 VILLAGE RD
Wellesley ON N0B2T0

Between: Kenneth Perino Landlord

And

Adrian Buta Tenants

Maria Karina Bandici

Kenneth Perino (the 'Landlord') applied for an order to terminate the tenancy and evict Adrian Buta and Maria Karina Bandici (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

Kenneth Perino (the 'Landlord') also applied for an order to terminate the tenancy and evict Adrian Buta and Maria Karina Bandici (the 'Tenants') because the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenants.

Kenneth Perino (the 'Landlord') also applied for an order requiring Adrian Buta and Maria Karina Bandici (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.

This application was heard by videoconference on September 18, 2023.

The Landlord Kenneth Perino and the Landlord's Legal Representative Kelly Hawkes and the Tenants Adrian Buta and Maria Karina Bandici attended the hearing.

Determinations:

Preliminary Issues

1. The Landlord requested consent of the Board to withdraw their L2 application. Pursuant to section 200(4) of the Act, I consented to the request.
2. At the hearing, I pointed out to the Landlord the N4 notice filed with the application on February 19, 2023 was signed and dated for this same day. I also noted the Certificate of Service accompanying the application states the N4 notice was served to the Tenants on February 2, 2023, 17 days before it was apparently signed.
3. The Landlord testified the copy of the N4 notice filed with the application was not the one he served on the Tenants. The Landlord submitted a different N4 notice in their evidence and this N4 is signed and dated on February 2, 2023. It is this N4 the Landlord testified he served to the Tenants on February 2, 2023.
4. The Landlord's evidence was he created the N4 notice at work on February 1, 2023 and served it on the Tenants the next day. His evidence was when he went to file the application he could not access a copy of the N4 that was stored on his work computer. For this reason, he filled out a new N4 and dated it for February 19, 2023, the day he filed the application. The Landlord testified he did not serve this copy on the Tenants and instead used it as a placeholder to file his application since he was unfamiliar with the process.
5. At the hearing, the Tenants had a copy of the N4 notice dated for February 19, 2023. I asked them if this document was served on them by the Landlord and they confirmed it had not been. The Tenants obtained this copy of the N4 from the materials filed with this L1 application.
6. The Tenants did not dispute the Landlord's testimony. They gave no evidence the Landlord did not serve the N4 notice signed and dated on February 2, 2023. As such, I was satisfied the N4 notice being relied upon to support the application was signed and served to the Tenants on February 2, 2023.

L1 Application

7. 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.
8. As of the hearing date, the Tenants were still in possession of the rental unit.
9. The Landlord submitted documentary evidence showing the rental unit was first occupied for residential purposes on December 2, 2019, the day title of the property was transferred to him by the builder. At the hearing, the Landlord testified the property was actually

transferred to him a day earlier on December 1, 2019 and the tenancy began on that day. This was not disputed by the Tenants. Pursuant to section 6.1(2) of the *Residential Tenancies Act, 2006* (the Act), I find the rental unit is not subject to guideline increases to the monthly rent.

10. The lawful rent was \$2,095.00 and it increased to \$3,500.00 on August 1, 2023. It is due on the 1st day of each month.
11. Based on the monthly rent, the daily rent/compensation is \$115.07. This amount is calculated as follows: \$3,500.00 x 12, divided by 365 days.
12. The Tenants have paid \$1,200.00 to the Landlord since the application was filed.
13. The rent arrears owing to September 30, 2023 are \$18,370.00. The Tenants did not dispute this amount.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The Landlord collected a rent deposit of \$2,095.00 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.
16. Interest on the rent deposit, in the amount of \$112.99 is owing to the Tenants for the period from December 2, 2019 to September 18, 2023.
17. The Landlord sought termination of the tenancy within 11 days of this order. The Landlord submitted ongoing attempts were made to negotiate a payment agreement with the Tenants however they did not succeed.
18. The Tenants stated the household relies on one income and the rent arrears accumulated when this employment was lost. The Tenants have two children, aged 2 and 3. They acknowledged they could no longer afford the rental unit even though they have now regained employment.
19. The Tenants submitted they have been looking for another place to live since February of 2023 and have been unsuccessful. At the hearing, the Tenants requested an additional six month's time to find somewhere else to live.
20. 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 not be unfair to postpone the eviction until October 31, 2023 pursuant to subsection 83(1)(b) of the Act. This additional time is meant to balance the interests of the Landlord and the Tenants. I find it likely the Tenants will need more than 11 days to find a suitable home for themselves and their children. October 31, 2023 provides the Tenants more than 40 days from the date of the hearing to find alternate living arrangements and I find this time period to be fair and reasonable.

It is ordered that:

1. The Landlord's L2 application is withdrawn.
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:**
 - \$22,056.00 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 have 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 \$14,919.27. 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 \$115.07 per day for the use of the unit starting September 19, 2023 until the date the Tenants move out of the unit.
8. If the Tenants do not pay the Landlord the full amount owing on or before October 14, 2023, the Tenants will start to owe interest. This will be simple interest calculated from October 15, 2023 at 6.00% 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 3, 2023

Date Issued

John Cashmore

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.

**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	\$23,070.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$1,200.00
Total the Tenants must pay to continue the tenancy	\$22,056.00

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

Rent Owing To Hearing Date	\$18,141.26
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$1,200.00
Less the amount of the last month's rent deposit	- \$2,095.00
Less the amount of the interest on the last month's rent deposit	- \$112.99
Total amount owing to the Landlord	\$14,919.27
Plus daily compensation owing for each day of occupation starting September 19, 2023	\$115.07 (per day)