



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

Citation: F4 Properties Inc. v Waller, 2023 ONLTB 64519

Date: 2023-09-29

File Number: LTB-L-036189-23

In the matter of: A, 406 GREY ST
LONDON ON N6B1H3

Between: F4 Properties Inc. Landlord

and

Rene-Preston Waller
Victoria Ryan Tenants

2023 ONLTB 64519 (CanLII)

F4 Properties Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Rene-Preston Waller and Victoria Ryan (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on September 13, 2023.

The Landlord's Legal Representative, Sabrina Heaman, and the Tenant, Victoria Ryan, attended the hearing.

As of 2:48pm, the Tenant, Rene-Preston Waller, 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.

Determinations:

Preliminary Issue – Amending the Application

1. At the hearing, I raised that the Landlord did not include March rent in their application. The Landlord sought to amend the application to include March's rent, which was unpaid, and amend the total arrears owing to reflect the proper amount owing at the time of filing. March's rent was included on the N4 Notice of Termination and the Tenant did not dispute that March's rent had not been paid. and the Tenant did not oppose the request to amend the application. The application is amended to request unpaid arrears from March 2023, with the total arrears owing as of May 4, 2023 being \$10,900.00.

N4 Notice

2. 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.
3. As of the hearing date, the Tenants were still in possession of the rental unit.
4. There was no dispute that the lawful monthly rent is \$2,400.00. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$78.90. This amount is calculated as follows: \$2,400.00 x 12, divided by 365 days.
6. The Landlord claimed that the Tenants have not made any payments since the application was filed.
7. The party bringing an application always carries the ultimate burden of proving their application on a balance of probabilities. However, once a landlord provides evidence that rent was not paid, the onus shifts to the Tenant to establish that the disputed payments were in fact made.
8. The Tenant claimed that her co-tenant, Rene-Preston Waller, was responsible for paying the rent and that although she believes he did make payments since the application was filed, she has no knowledge of what he was paying.
9. I prefer the evidence of the Landlord to the Tenant. The Landlord gave direct evidence that the rent had not been paid.. The Tenant was relying on hearsay evidence and could not provide any specifics as to dates of payments or amounts of payments, just a general belief that payments were made by her co-tenant. I find on a balance of probabilities that the Tenants did not make any payments since the application was filed.
10. The rent arrears owing to September 30, 2023 are \$20,500.00.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$2,400.00 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.
13. Interest on the rent deposit, in the amount of \$58.19 is owing to the Tenants for the period from September 25, 2022 to September 13, 2023.

Section 83

14. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.

15. The Landlord is seeking a standard termination order. The Landlord's Legal Representative submits that the arrears are substantial, the Tenants have not made any payments since the application was filed, and it is financially unviable for the Landlord.
16. The Tenant is seeking additional time so that she can secure alternative living arrangements. The Tenant testified that she is currently in receipt of employment insurance and receives \$1,600.00 per month. Her co-tenant is currently incarcerated and not receiving any income. The Tenant testified that she has an organization willing to subsidize half of her monthly rent amount for October and November, should eviction be postponed until the end of November or December. The Tenant submitted that she would agree to a condition.
17. The Landlord submitted that they were not opposed to delaying eviction until November 30, 2023, provided that a conditional order is issued requiring the Tenants to pay the rent in full, and on time for the months of October and November 2023.
18. 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 November 30, 2023 pursuant to subsection 83(1)(b) of the Act.
19. The Tenant requested that eviction be postponed until December due to it being Christmas and needing to find another place to live. The arrears are substantial and have continued to increase, despite the Tenant being in receipt of EI. The Tenant is a single parent with full-time custody of two children. The eviction is being postponed to provide the Tenant with an opportunity to find new living arrangements. Considering all of the above, it would not be unfair to postpone the eviction to November 30, 2023, with conditions requiring the Tenants pay any new rent that becomes due, in full and on time. I find that it would be unfair to postpone the eviction further.

It is ordered that:

1. The tenancy between the Landlord and the Tenants are terminated unless the Tenants voids this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - **\$20,686.00** if the payment is made on or before September 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - **\$23,086.00** if the payment is made on or before October 10, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - **\$25,486.00** if the payment is made on or before November 30, 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 10, 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 10, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$16,853.51. 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 **\$78.90** per day for the use of the unit starting September 14, 2023 until the date the Tenants moves out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before October 10, 2023, the Tenants will start to owe interest. This will be simple interest calculated from October 11, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before October 10, 2023, then starting October 11, 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 October 11, 2023.

Additional Conditions

10. For the period of October 2023 to November 2023, or until the arrears are paid in full, which ever is earliest, the Tenants shall pay the Landlord the monthly rent in full and by the **first day** of each corresponding month.
11. If the Tenants fail to make any one of the payments in accordance with paragraph 10, the Landlord may, without notice to the Tenants, apply to the LTB within 30 days of the Tenants' breach pursuant to section 78 of the *Residential Tenancies Act, 2006*, for an order terminating the tenancy and evicting the Tenants. The order that results from this section 78 application is usually issued without a hearing.

September 29, 2023

Date Issued

Candace Aboussafy

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 11, 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 September 30, 2023

Rent Owing to September 30, 2023	\$20,500.00
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	\$20,686.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before October 10, 2023

Rent Owing to October 31, 2023	\$22,900.00
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	\$23,086.00

C. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before November 30, 2023

Rent Owing to November 30, 2023	\$25,300.00
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 is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$25,486.00

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

Rent Owing to Hearing Date	\$19,125.70
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	- \$2,400.00
Less the amount of the interest on the last month's rent deposit	- \$58.19
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$16,853.51
Plus daily compensation owing for each day of occupation starting September 14, 2023	\$78.90 (per day)