



Order under Section 69 Residential Tenancies Act, 2006

Citation: Barran v Soltesz, 2023 ONLTB 64297

Date: 2023-09-28

File Number: LTB-L-031518-23

In the matter of: Unit 2, 388 WILSON ST
HAMILTON ON L8L1S9

Between:	Tracy Barran	Landlord
	and	
	Tibor Soltesz Robert Soltesz	Tenants

2023 ONLTB 64297 (CanLII)

Tracy Barran (the 'Landlord') applied for an order to terminate the tenancy and evict Tibor Soltesz, Robert Soltesz (the "Tenants") and Kevin Soltesz because the Tenant did not pay the rent that the Tenant owes.

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

The Landlord and the Tenant, Robert Soltesz, on behalf of both Tenants, attended the hearing. Kevin Soltesz signed in for the hearing intending to participate and assist Robert Soltesz, but disconnected some time after his request for an adjournment was denied.

Determinations:

Preliminary Issues

Adjournment Request

1. At the hearing, the occupant, Kevin Soltesz, requested an adjournment as he had to leave for work momentarily. He advised that his father, Robert Soltesz, would be signing on to the hearing, however, he speaks limited English and would require a translator. He confirmed that the parties had received the notice of hearing but he recently started a new job and did not want to request time off.
2. The Landlord opposed the adjournment request, stating that the arrears are substantial, and the Tenants have not made any payments or communicated with the Landlord or the property manager, despite having made attempts to discuss the arrears with the Tenants.

3. In my view, the Tenants received ample notice of the hearing and if Kevin Soltesz' attendance was required to assist his father with the proceedings, he could have made those arrangements but chose not to and, therefore, the adjournment request was denied. Additionally, it appeared to me that the Tenant RS was able to effectively participate in the hearing and he appeared to understand the proceedings.

Amending the Application

4. At the hearing, the Tenant RS denied that the Kevin Soltesz was a tenant, and testified instead that he is only an occupant and not a named party in the tenancy agreement. The Landlord submitted that Kevin Soltesz signed the tenancy agreement and therefore is a tenant.
5. The Landlord provided a copy of the tenancy agreement, which showed a tenancy agreement between Tracy Barran, the Landlord, and Tibor and Robert Soltesz. Although Kevin Soltesz' name did appear on the tenancy agreement and he initialed the agreement in several places, his name was scratched out and replaced by Tibor Soltesz'. His signature was also scratched out in nearly all spaces on the tenancy agreement.
6. The Tenant testified that Kevin Soltesz' name was removed prior to the commencement of the tenancy after discussion with the Landlord's Real Estate Agent, who was handling the tenancy agreement and rental of the unit. The Landlord confirmed that Kevin Soltesz' name was scratched out by his real estate agent but that because he signed the tenancy agreement, he was still a tenant.
7. Based on the testimony of the parties, I find that Kevin Soltesz is not a tenant. His name was removed from the tenancy agreement with the consent of the Tenants and the Landlord's Agent, prior to the commencement of the tenancy. I am satisfied that there was no agreement between the parties to make Kevin Soltesz a tenant. The application is therefore amended to remove Kevin Soltesz as a party.

The N4 Notice

8. 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.
9. As of the hearing date, the Tenants were still in possession of the rental unit.
10. There was no dispute that the lawful rent is \$1,800.00 and that it is due on the 1st day of each month.
11. The Landlord claimed that the Tenants have not made any payments since the application was filed. The Tenant claims that he made two cash payments of \$1,150.00, one in July 2023 and one in August 2023.
12. There was no dispute that the Tenants' typical payment method is to pay the Landlord directly, in cash. The Tenant testified that he does not receive receipts for his rent payments. The Landlord testified that he does issue receipts for rent payments when they are received in cash. Neither party produced a copy of a rent receipt.

13. 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 Tenants to positively establish that the rent was in fact paid.
14. The Tenant testified that he made the two cash payments to the Landlord at some time in July 2023 and August 2023. He testified that the Landlord did not give him receipts for these payments.
15. The Landlord testified that he did not receive any payments from the Tenants in July or August 2023 and that the last payment he received from the Tenants was in April 2023. The Landlord testified that he now has a property manager and all rent payments go through the property manager. The Tenant testified that he has never met the property manager.
16. I prefer the evidence of the Landlord to the Tenant. The Landlord's testimony was consistent and straight forward. This is in contrast to the testimony of the Tenant which was vague and lacked specifics, such as specific or approximate dates that payments were made. Moreover, while a landlord bears the burden of establishing rent arrears in an application such as this, the tenant typically bears the burden of establishing that a particular payment or payments were made when disputed by the landlord.
17. I would have expected the Tenant to produce some documentary evidence in support of their claim that they paid in cash, such as banking records showing large cash withdrawals near the times the rent was allegedly paid. In the absence of a satisfactory explanation as to why they did not produce what I would expect to be readily available evidence, I decline to find that cash payments were made as alleged by the Tenants.
18. I find on a balance of probabilities that the Tenants did not make any payments to the Landlord in July or August 2023.
19. Based on the Monthly rent, the daily rent/compensation is \$59.18. This amount is calculated as follows: $\$1,800.00 \times 12$, divided by 365 days.
20. The rent arrears owing to September 30, 2023 are \$10,800.00.
21. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
22. The Landlord collected a rent deposit of \$1,800.00 from the Tenant 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.
23. Interest on the rent deposit, in the amount of \$35.38 is owing to the Tenant for the period from December 1, 2022 to September 13, 2023

Section 83

24. The Landlord is seeking a standard termination order. The Landlord said that he has made every attempt to negotiate a payment plan with the Tenants but they Tenants are either non-responsive or dismissive. The Landlord submits that the tenancy is no longer viable.

25. The Tenant is seeking to preserve the tenancy. The Tenant submits that he receives \$2,400.00 each month but he is unsure of the Tenant TS' source of income or how much he receives. The Tenant testified that his wife, who also lives in the rental unit, was receiving ODSP and contributing to the rent, however, her ODSP benefits ended in June 2023. He testified that without her shelter portion from ODSP, the Tenants cannot afford to pay the rent.
26. I find that it would not be fair in the circumstances to deny eviction and instead impose a repayment plan, as I am not satisfied that the Tenants would be able to abide by a repayment plan for two reasons. First, the Tenant BS presented no proposal or plan to repay the arrears owing to the Landlord. Second, the Tenant's testimony suggests that they are not longer able to afford the rental unit.
27. 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.
28. The Tenant requested that eviction be postponed for three months so that they could find another place to live. The arrears are substantial and have continued to increase, despite one of the Tenants having no change in their income. RS' wife is elderly and has multiple disabilities. As a result, the eviction is being postponed to provide the Tenants with time to find new living arrangements. Considering all of the above, it would not be unfair to postpone the eviction to October 31, 2023. and it would be unfair to postpone the eviction further.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - **\$10,986.00** if the payment is made on or before September 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - **\$12,786.00** if the payment is made on or before October 31, 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 31, 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 31, 2023**

5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$8,119.96. 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 \$59.18 per day for the use of the unit starting September 14, 2023 until the date the Tenant moves out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before October 9, 2023, the Tenants will start to owe interest. This will be simple interest calculated from October 10, 2023 at 6.00% annually on the balance outstanding.
8. 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.
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 1, 2023.

September 28, 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 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 September 30, 2023

Rent Owing to September 30, 2023	\$10,800.00
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	\$10,986.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before October 31, 2023

Rent Owing to October 31, 2023	\$12,600.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$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	\$12,786.00

2023 ONL TB 64297 (CanLI)

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

Rent Owing to Hearing Date	\$9,769.34
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 of the last month's rent deposit	- \$1,800.00
Less the amount of the interest on the last month's rent deposit	- \$35.38
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	\$8,119.96
Plus daily compensation owing for each day of occupation starting September 14, 2023	\$59.18 (per day)

2023 ONLTB 64297 (CanLI)