



Order under Section 78(6) Residential Tenancies Act, 2006

Citation: STARLIGHT CANADIAN RESIDENTIAL GROWTH FUND v Nungutse, 2023 ONLTB 61601

Date: 2023-09-27

File Number: LTB-L-049636-23

In the matter of: 1406, 1975 ST. LAURENT BLVD
OTTAWA ON K1G3S7

Between: STARLIGHT CANADIAN RESIDENTIAL GROWTH FUND Landlord

And

Brillant Nungutse and Yves Mugabe Nololi Tenants

STARLIGHT CANADIAN RESIDENTIAL GROWTH FUND (the 'Landlord') applied for an order to terminate the tenancy and Brilliant Nungutse and Yves Mugabe Nololi (the 'Tenants') because the Tenants failed to meet a condition specified in the order issued by the Board on March 2, 2023 with respect to application LTB-L-029337-22.

A hearing was held to consider this application. This application was heard by videoconference on August 22, 2023.

Only the Landlord's representative Christine Daniel attended the hearing.

As of 9:35 a.m., the Tenants were not present or represented at the hearing although properly served with notice of this hearing by the Board. 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 order LTB-L-029337-22 provides that the Landlord can apply to the Board under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenants to terminate the tenancy and evict the Tenants if the Tenants do not meet certain condition(s) in the order. This application was filed within 30 days of the breach and was sent to a hearing because the payments received by the Landlord were unclear.

The breach

2. The Tenants had failed to make arrears payments of \$500.00 on or before May 15, 2023 and on or before June 15, 2023 and failed to pay the lawful monthly rent of \$1,447.04 in full on May 1, 2023 and June 1, 2023.

3. The Landlord further testified that the Tenants never achieved a zero balance or paid off the arrears between the date of the original hearing on January 18, 2023 to the date of the hearing of the L4 application (August 22, 2023).
4. Based on the uncontested evidence before me, I find that the Tenants were in breach of the order dated March 2, 2023; specifically, the Tenants failed to pay failed to make two arrears payments of \$500.00 on or before May 15, 2023 and the other on or before June 15, 2023 and failed to pay the lawful monthly rent of \$1,447.04 in full on May 1, 2023 and June 1, 2023, \$17.36 was the outstanding balance from the May and June rent payments.

Arrears owing

5. The previous application includes a request for an order for the payment of arrears of rent and the LTB-L-029337-22 requires the Tenant to make payments by specific due dates. Accordingly, in addition to eviction, the Landlord is entitled to request an order for the payment of arrears owing.
6. The Tenants were ordered to pay \$12,576.83 for rent arrears, and the application filing fee in the previous order. The amount that is still owing from that order is \$11,056.83 and that amount is included in this order. This order replaces order LTB-029337-22.
7. Since the date of the previous order, the Tenants have failed to pay the full rent that became owing for the period from May 1, 2023 to August 22, 2023.

The rent deposit

8. The Landlord collected a rent deposit of \$1,395.03 from the Tenant and this deposit is still being held by the Landlord.
9. Interest on the rent deposit is owing to the Tenant for the period from January 1, 2021 to August 22, 2023.
10. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenant is required to pay.

Daily compensation

11. The Landlord is entitled to daily compensation from starting August 23, 2023 until the date the Tenant moves out of the unit. Based on the Monthly rent, the daily rent/compensation is \$47.57. This amount is calculated as follows: \$1,447.04 x 12, divided by 365 days.

Section 83 considerations

12. 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. The Tenants did not attend

the hearing and Landlord is unaware of any circumstances that would justify relief from eviction.

13. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. Order LTB-L-029337-22 is cancelled.
2. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before October 8, 2023.
3. If the unit is not vacated on or before October 8, 2023, then starting October 9, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. 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 9, 2023.
5. The Tenants shall pay to the Landlord \$9,296.73*. This amount represents the rent owing up to August 22, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.
6. The Tenants shall also pay to the Landlord \$47.57 per day for compensation for the use of the unit starting August 23, 2023 to the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before October 8, 2023, the Tenants will start to owe interest. This will be simple interest calculated from October 9, 2023 at 6% annually on the balance outstanding.

September 27, 2023

Date Issued

Alicia Johnson

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 2, 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.

* Refer to the attached Summary of Calculations.

SUMMARY OF CALCULATIONS**Amount the Tenants must pay the Landlord:**

Reason for amount owing	Period	Amount
Amount of arrears owing from previous order	Up to January 31, 2023	\$11,056.83
Amount of compensation for damages owing from previous order		\$0.00
New Arrears	February 1, 2023 to August 22, 2023	\$102.16
New NSF cheque charges and related administration charges		\$0.00
Less the rent deposit:		-\$1,395.03
Less the interest owing on the rent deposit	January 1, 2021 to August 22, 2023	-\$39.10
Plus daily compensation owing for each day of occupation starting August 23, 2023		\$47.57 (per day)

Total the Tenant must pay the Landlord:	\$9,296.73+ \$47.57 per day starting August 23, 2023
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