



Order under Section 69 Residential Tenancies Act, 2006

Citation: Rastgoo v Pierce, 2023 ONLTB 64629

Date: 2023-09-26

File Number: LTB-L-063344-23

In the matter of: 1037 ELGIN ST
Newmarket ON L3Y3C3

Between: Ali Rastgoo Landlord

And

Dave Pierce and Jennifer Pierce Tenants

Ali Rastgoo (the 'Landlord') applied for an order to terminate the tenancy and evict Dave Pierce and Jennifer Pierce (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

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

The Landlord, the Landlord's legal representative, Kimberly Covey ('KC'), and the Tenant, Jennifer Pierce ('JP'), attended the hearing. JP confirmed that she was appearing on behalf of herself and the other Tenant, Dave Pierce.

Determinations:

1. 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.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$2,050.00. It is due on the 4th day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$67.40. This amount is calculated as follows: $\$2,050.00 \times 12$, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The parties agreed that the rent arrears owing to October 3, 2023 are \$8,200.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.
9. KC said that this is not the first rent arrears application the Landlord has brought against the Tenants. IN LTB-L-067345-22, the Landlord brought an L1 application against the

Tenants. The LTB found in that application that the N4 notice was defective, and the Landlord proceeded to seek an order for arrears only. The Tenants were ordered to pay the Landlord \$20,686.00 for rent arrears to the period ending June 3, 2023 and the Landlord's application fee in that matter.

10. The Landlord gave evidence about his circumstances. He said the Tenants have not paid any rent since August 2022, and that at the hearing of the previous application, the LTB did not issue an order terminating the tenancy because of a defect with the N4 notice. Despite that order requiring the Tenants to pay him \$20,686.00, they have made no payments.
11. The Landlord said that he pays the electricity bill, and also has to pay a mortgage related to the rental unit. He also gave evidence that he is undergoing chemotherapy treatment for cancer. He said that he has to pay about \$500 per month for the chemotherapy.
12. The Landlord also said that because of this illness and the related treatment, he has had to stop working and his income is limited to about \$2,140.00 per month from Employment Insurance. He said this barely covers the mortgage, and he has to use his line of credit to pay all of his bills, which results in additional interest payments. He said he is in danger of losing the rental unit. He said he cannot work and can barely walk.
13. The Landlord said that he was renting his own living accommodation, but has had to move back in with his parents due to the financial difficulty he is experiencing.
14. The Landlord also said that he has tried to work with the Tenants to repay the rent arrears, but these efforts have not been successful. Between the rent arrears at issue in this application and the previous one, the Tenants owe him a total of \$28,700.00.
15. JP said the Tenants have found a new place to live, but it is not available until November 2023. She said the Tenants have not paid the rent for so long because they do not have the money to do so. She said they are living on only \$863.00 per month while they wait for ODSP applications to be approved. She said they applied for ODSP in February 2023, but approval has been delayed.
16. JP said the Tenants have been searching for other accommodation for a long time, but it is difficult to find an affordable place to live. She said the Tenants do not have enough income to arrange a payment plan with the Landlord.
17. JP said the Tenants are the only people living in the rental unit.
18. The Landlord said that he cannot handle this situation financially and November 2023 is too far out.
19. 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.

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:**
 - \$8,386.00 if the payment is made on or before October 3, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$10,436.00 if the payment is made on or before October 7, 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 7, 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 7, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$7,347.00. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$67.40 per day for the use of the unit starting September 19, 2023 until 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 7, 2023, the Tenants will start to owe interest. This will be simple interest calculated from October 8, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before October 7, 2023, then starting October 8, 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 8, 2023.

September 26, 2023
Date Issued

Mark Melchers
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 8, 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 3, 2023

Rent Owing To October 3, 2023	\$8,200.00
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 is entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$8,386.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before October 7, 2023

Rent Owing To November 3, 2023	\$10,250.00
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 is entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$10,436.00

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

Rent Owing To Hearing Date	\$7,161.00
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 of the last month's rent deposit	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$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 is entitled to	- \$0.00
Total amount owing to the Landlord	\$7,347.00
Plus daily compensation owing for each day of occupation starting September 19, 2023	\$67.40 (per day)