



Order under Section 69 Residential Tenancies Act, 2006

Citation: Saini v Isree, 2023 ONLTB 65435

Date: 2023-09-25

File Number: LTB-L-000453-23

In the matter of: Upper Level, 13 CONNOLLY CRES
BRAMPTON ON L6R0H1

Between: Sarita Saini, Harvinder Saini, and Sumit Saini Landlords

And

Rajeed Isree, Chitrane Isree, Tarachand Isree and Kamatie Mangroo Tenants

Sarita Saini, Harvinder Saini and Sumit Saini (the 'Landlords') applied for an order to terminate the tenancy and evict Rajeed Isree, Chitrane Isree, Tarachand Isree and Kamatie Mangroo (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

The Landlords also applied for an order to terminate the tenancy and evict the Tenants because:

- the Landlords in good faith require possession of the rental unit for the purpose of residential occupation for at least one year.

The Landlords also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on July 10, 2023.

Only the Landlords' Legal Representative Tigran Sandukhchyan, Sarita Saini, and Harvinder Saini attended the hearing. Harvinder Saini is the husband of Sarita Saini and has always dealt with the property and therefore fits the definition of "landlord" under the *Residential Tenancies Act, 2006* (Act). The application is amended to add Harvinder Saini as a Landlord party.

As of 10:45 a.m., the Tenants were 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 Landlords' evidence.

Determinations:

L1 Application - Arrears

1. The Landlords 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.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$2,500.00. It is due on the 4th day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$82.19. This amount is calculated as follows: \$2,500.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to August 3, 2023 are \$20,500.00.
7. The Landlords incurred costs of \$186.00 for filing the application and are entitled to reimbursement of those costs.
8. The rent deposit of \$2,500.00 was applied to the November 4 to December 3, 2022 rent period, as this was the last month of the lease and the Tenants stated that they were vacating the rental unit.
9. Interest on the rent deposit, in the amount of \$67.50 is owing to the Tenants for the period from December 4, 2021 to July 10, 2023.
10. The Landlord Harvinder Saini testified that they sent letters to the Tenants regarding the arrears and received no response. The Landlord stated that he spoke with the Tenants on June 7, 2023 and they were hostile, therefore he only communicated with them in writing.
11. The Tenants are a couple and two adult children.
12. 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 Landlords 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.

L2 Application – Landlords' own use

13. The application is dismissed because I have insufficient evidence to determine that the Landlords paid the Tenants the compensation required under the Act.

14. The Tenants were in possession of the rental unit on the date the application was filed.
15. On December 27, 2022, the Landlords gave the Tenants an N12 notice of termination under section 48 of the Act with the termination date of March 3, 2023 (the end of the monthly tenancy rental period). The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord Harvinder Saini, because he needs to move into the unit to care for his elderly parents.
16. Section 48.1 of the Act states that, “a landlord shall compensate a tenant in the amount equal to one month’s rent or offer the tenant another rental unit acceptable to the tenant if the landlord gives the tenant a notice of termination of the tenancy under section 48”.
17. Section 55.1 of the Act requires that compensation under section 48.1 be paid to the tenant no later than on the termination date specified in the notice of termination. In the present case, the termination date in the N12 Notice of Termination is March 3, 2023.
18. The Landlord submitted a letter dated December 26, 2022 to the Tenants from the Landlord’s Legal Representative which accompanied the N4 and N12 notices and clearly explains the two notices and termination dates. It also informs the Tenants that compensation “must be and will be paid to you no later than the termination date provided in the notice.”
19. No evidence was filed by the Landlords as to when the compensation was paid. While it was suggested that the compensation was paid during the N4 period by waiving a month of rent, it was unclear which month’s rent was waived and therefore I cannot accept that one of those months was waived as compensation for the N12. Further, the months included in the N4 notice all pre-date the service of the N12 and pre-date the Landlords’ Legal Representative’s letter which explains that compensation *will* be provided prior to the termination date. There is no evidence of communications with the Tenants after the service of the N12 that a month of rent was waived in lieu of compensation.
20. Because the evidence with respect to the compensation is unclear, the L2 application is dismissed.

It is ordered that:

Regarding the L1 application:

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust** (*less any payments made since the date of the hearing*):
 - \$25,686.00 if the payment is made on or before October 3, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$28,186.00 if the payment is made on or before October 6, 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 6, 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 6, 2023**
 5. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$16,193.83. 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 Landlords owe 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 Landlords compensation of \$82.19 per day for the use of the unit starting July 11, 2023 until the date the Tenants move out of the unit.
 7. If the Tenants does not pay the Landlords the full amount owing on or before October 6, 2023, the Tenants will start to owe interest. This will be simple interest calculated from October 7, 2023 at 7.00% annually on the balance outstanding.
 8. If the unit is not vacated on or before October 6, 2023, then starting October 7, 2023, the Landlords 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 7, 2023.

Regarding the L2 application:

10. The application is dismissed.

September 25, 2023

Date Issued

Margo Den Haan

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 7, 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 <i>(less any payments made since the date of the hearing)</i>	\$25,500.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$0.00
Total the Tenants must pay to continue the tenancy (less any payments made since the date of the hearing)	\$25,686.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before October 6, 2023

Rent Owing To November 3, 2023 <i>(less any payments made since the date of the hearing)</i>	\$28,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$0.00
Total the Tenants must pay to continue the tenancy (less any payments made since the date of the hearing)	\$28,186.00

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

Rent Owing To Hearing Date	\$18,575.33
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$2,500.00
Less the amount of the interest on the last month's rent deposit	- \$67.50
Total amount owing to the Landlords	\$16,193.83

Plus daily compensation owing for each day of occupation starting July 11, 2023	\$82.19 (per day)
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