



Order under Section 69 Residential Tenancies Act, 2006

Citation: Starlight Canadian Residential Growth Fund v Brooks comeau, 2023 ONLTB 64307

Date: 2023-09-25

File Number: LTB-L-009572-23

In the matter of: 3486 FIELDGATE DR
MISSISSAUGA ON L4X2J5

Between: Starlight Canadian Residential Growth Fund Landlord

And

Crystal-jean Brooks Comeau Tenant
Cheryl Diane Brooks

Starlight Canadian Residential Growth Fund (the 'Landlord') applied for an order to terminate the tenancy and evict Crystal-jean Brooks comeau and Cheryl Diane Brooks (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on August 28, 2023.

The Landlord's representative C. Daniel and the Tenants attended the hearing.

Determinations:

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant 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 Tenant was still in possession of the rental unit.
3. The lawful rent is \$3,106.71. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$102.14. This amount is calculated as follows: \$3,106.71 x 12, divided by 365 days.
5. The Tenant has paid \$6,430.00 to the Landlord since the application was filed.
6. The rent arrears owing to August 31, 2023 are \$20,435.56.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$3,040.83 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.

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9. Interest on the rent deposit, in the amount of \$49.99 is owing to the Tenant for the period from January 1, 2023 to August 28, 2023.

Section 83

10. Section 83 requires that I consider all the circumstances, including the Tenants' and the Landlord's situations to determine if it would be appropriate to grant section 83 relief from eviction.
11. The Tenants moved into the rental unit in January 2021 and seek to remain at the rental unit. The Tenants have 4 children, who attend school nearby and have health considerations. The Tenants total monthly income is approx. \$4,800.00. The Tenants proposed to pay the monthly rent of \$3,106.71 going forward and to make payments towards the arrears in the amount of \$300/month. Further, the Tenants indicated they recently have contacted Ontario Works, who indicated they could pay \$10,000.00 towards the arrears.
12. The Landlord's representative indicated the Landlord has reached out to the Tenants for a repayment plan without success and that the arrears are substantial. Even if the proposed lump sum payment from OW is received, it was noted the time proposed by the Tenants to pay back the arrears (approx. 36 months) is excessive and prejudicial.
13. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the Tenant's personal and financial circumstances, and balanced this with any potential prejudice to the Landlord. In the circumstances, I find the Tenant's failure to pay the full monthly rent over several months suggests an inability and/or unwillingness to comply with a repayment plan moving forward. While the Tenants indicated they would be receiving a lump sum payment of \$10,000.00 from OW, the Tenants did not produce any documentation or other corroborating evidence in support. Moreover, the Tenant's ability to pay back arrears in a reasonable amount of time appears doubtful given the accrued arrears and the monthly rent amount.
14. Notwithstanding the foregoing, given the Tenants' noted family circumstances and challenges identified in securing alternative accommodations, I find that it would not be unfair to postpone the eviction until November 17, 2023 pursuant to subsection 83(1)(b) of the Act. The delayed eviction will provide the Tenants with additional time to either void the order as noted in my order below, or alternatively, find alternative accommodations.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$23,728.27 if the payment is made on or before September 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$26,834.98 if the payment is made on or before October 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$29,941.69 if the payment is made on or before November 17, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after November 17, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
 4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before November 17, 2023**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$17,283.95. 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 Tenant. See Schedule 1 for the calculation of the amount owing.
 6. The Tenant shall also pay the Landlord compensation of \$102.14 per day for the use of the unit starting August 29, 2023 until the date the Tenant moves out of the unit.
 7. If the Tenant does not pay the Landlord the full amount owing on or before November 17, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 18, 2023 at 6.00% annually on the balance outstanding.
 8. If the unit is not vacated on or before November 17, 2023, then starting November 18, 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 18, 2023.

September 25, 2023

Date Issued

Peter Nicholson
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.

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In accordance with section 81 of the Act, the part of this order relating to the eviction expires on May 18, 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 Tenant 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	\$29,972.27
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,430.00
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	\$23,728.27

B. Amount the Tenant 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	\$33,078.98
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,430.00
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	\$26,834.98

C. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before November 15, 2023

Rent Owing To November 30, 2023	\$36,185.69
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,430.00
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	\$29,941.69
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D. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$26,618.77
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,430.00
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	- \$3,040.83
Less the amount of the interest on the last month's rent deposit	- \$49.99
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	\$17,283.95
Plus daily compensation owing for each day of occupation starting August 29, 2023	\$102.14 (per day)

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