



Order under Section 69 Residential Tenancies Act, 2006

Citation: Yalamanchilli v Mootoo, 2023 ONLTB 57439

Date: 2023-08-23

File Number: LTB-L-016036-23

In the matter of: 8 Grackle trail
Scarborough ON M1X1X3

Between: Ragini Yalamanchilli Landlord

And

Zolton Christopher Daine Mootoo and Eliza Marie Blackwood Tenants

Ragini Yalamanchilli (the 'Landlord') applied for an order to terminate the tenancy and evict Zolton Christopher daine Mootoo and Eliza Marie Blackwood (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on August 3, 2023.

The Landlord, the Landlord's representative Bryan Rubin, and the Tenants Zolton Christopher Daine Mootoo attended the hearing.

Determinations:

1. The Landlord 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 \$2,200.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$72.33. This amount is calculated as follows: \$2,200.00 x 12, divided by 365 days.
5. The Landlord provided an account of all payments made since the beginning of the arrears period in January 2021. The Landlord submits that no payments have been made since the application was filed and the outstanding arrears are \$23,610.00.

6. The Tenant Zolton Christopher Daine Mootoo ('Z.C.D.M') testified that he met with the Landlord in either October or November 2021 and gave the Landlord \$4,500.00 which cleared all arrears for 2021. He also mentioned another direct deposit payment in 2022 but was not able to state when that was made. The Tenant testified that the arrears period probably starts November 2022, not 2021.
7. 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 Tenant to positively establish that the rent was in fact paid.
8. I am not satisfied on a balance of probabilities that the Tenants paid off all arrears prior to November 2022. This because the Tenant Z.C.D.M was unable to say what exactly he paid and on what date from January 2021 to August 31, 2023. The Tenant talked generally about payments made but was not able to provide specifics. He also seemed unsure of what was outstanding and said the arrears period was "probably" from November 2022. I also note that while the Tenant says he paid \$4,500.00 in October 2021, according to the Landlord's records the Tenants only owed \$500.00 in arrears at that time. Additionally, the Tenant had no supporting documentation to establish what was paid and when.
9. In contrast, the Landlord was able to provide a detailed account of what was paid and when.
10. For those reasons, I find that the rent arrears owing to August 31, 2023 are \$23,610.00.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. There is no last month's rent deposit.
13. The Tenant Z.C.D.M testified that he could possibly pay off the arrears but did not propose a specific repayment plan. I do not find that it would be fair in the circumstances to impose a repayment plan because I am not satisfied that the Tenant would abide by it. This is because the Tenant has made no payments since the application was filed.
14. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including that 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. This is because the outstanding arrears are extremely high, the Landlord has been waiting a significant period time for repayment and is facing foreclosure from the bank.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants voids this order.

2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**

- \$23,796.00 if the payment is made on or before August 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$25,996.00 if the payment is made on or before September 3, 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 has paid the full amount owing as ordered plus any additional rent that became due after September 3, 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 September 3, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$21,812.99. 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 \$72.33 per day for the use of the unit starting August 4, 2023 until the date the Tenants moves out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before September 3, 2023, the Tenants will start to owe interest. This will be simple interest calculated from September 4, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before September 3, 2023, then starting September 4, 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 September 4, 2023.

August 23, 2023

Date Issued

Amanda Kovats

Member, Landlord and Tenants 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.

File Number: LTB-L-016036-23

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on March 4, 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.

2023 ONL TB 57439 (CanLII)

**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 August 31, 2023

Rent Owing To August 31, 2023	\$23,610.00
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	\$23,796.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before September 3, 2023

Rent Owing To September 30, 2023	\$25,810.00
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	\$25,996.00

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

Rent Owing To Hearing Date	\$21,626.99
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	- \$

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	\$21,812.99
Plus daily compensation owing for each day of occupation starting August 4, 2023	\$72.33 (per day)