



Order under Section 69 Residential Tenancies Act, 2006

Citation: Dinatale v Mathieu, 2023 ONLTB 57508

Date: 2023-08-21

File Number: LTB-L-025617-23

In the matter of: 1, 312 NELSON ST
SUDBURY ON P3B2N8

Between: Carmelo Dinatale Landlord

And

Lorraine Mathieu and William Dean Tenant

Carmelo Dinatale (the 'Landlord') applied for an order to terminate the tenancy and evict Lorraine Mathieu and William Dean (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on July 31, 2023.

The Landlord's representative Angie Gravelle and the Tenants Lorraine Mathieu (LM) and William Dean(WD) attended the hearing.

Tenant's Hydro Bills and Maintenance Issues:

1. At the hearing the Tenants requested to raise a number of issues pursuant to section 82 of the Residential Tenancies Act, 2006 (the 'Act'). The Tenants did not notify the Landlord of their intention to raise these issues prior to the hearing or disclose their supporting evidence prior to the hearing as directed in the Notice of Hearing. They did not provide any explanation why they couldn't do so.
2. As the Tenants did not provide disclosure to the Landlord and could not provide a satisfactory explanation for their failure to do so. As they did not meet the disclosure requirements set out in s. 82(1) of the Act and the Board's Rules of Practice, I did not permit them to raise the issues during the hearing. However, the Tenants are entitled to raise these issues by filing their own application with the Board.

Adjournment Request

3. The Tenants also requested that the hearing be adjourned so they could retain counsel, submit evidence regarding maintenance issues, and better prepare for the hearing. The Tenants offered no substantive reason why they did not retain or consult counsel in the weeks since they received notice of the hearing. While LM attributed it to being eight months pregnant, WD had done nothing to retain counsel before the hearing.
4. The Tenants were aware of the hearing well before the scheduled date. Given their lack of initiative in seeking legal representation, it would not be fair to grant their request for an adjournment. They are not entitled to delay the Landlord's application if they are not prepared to proceed. As a result, the request for an adjournment was denied, and the hearing commenced.

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 \$1,800.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$59.18. This amount is calculated as follows: $\$1,800.00 \times 12$, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to July 31, 2023 are \$10,800.00.
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 \$1,800.00 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.
9. Interest on the rent deposit, in the amount of \$35.75 is owing to the Tenant for the period from October 15, 2022 to July 31, 2023.
10. The Landlord requested that the tenancy between the Landlord and the Tenant be terminated by standard order. The Landlord presented copies of letters and text messages between them and the Tenant as evidence. These documents indicate that the Landlord tried to arrange payment plans with the Tenant, but the Tenant did not respond.
11. The Tenants requested additional time to vacate the unit. LM is eight months pregnant and claims she earns \$2,000.00 working as an inbound operator for Vianet, which is used to

support her family of three children aged seven, six, and four and pays monthly expenses of \$1,550.00. LM claims that her family does not receive child tax benefits, and WD has been home since he lost his job in 2022 and received \$578 in bi-weekly unemployment benefits from February to April 2022.

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 not be unfair to postpone the eviction until September 30, 2023 pursuant to subsection 83(1)(b) of the Act to give the Tenants sufficient time to void this order and continue the tenancy or find alternative housing.

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:**
 - \$12,786.00 if the payment is made on or before August 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$14,586.00 if the payment is made on or before September 30, 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 September 30, 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 September 30, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$9,150.25. 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 \$59.18 per day for the use of the unit starting August 1, 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 September 1, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 2, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before September 30, 2023, then starting October 1, 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 1, 2023.

August 21, 2023

Percy Laryea



Date Issued

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 1, 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 August 31, 2023

Rent Owing To August 31, 2023	\$12,600.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	\$12,786.00

B. 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	\$14,400.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	\$14,586.00

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

Rent Owing To Hearing Date	\$10,800.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	- \$1,800.00
Less the amount of the interest on the last month's rent deposit	- \$35.75

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	\$9,150.25
Plus daily compensation owing for each day of occupation starting August 1, 2023	\$59.18 (per day)