



Order under Section 69 Residential Tenancies Act, 2006

Citation: Starlight Canadian Residential Growth Fund III v McKoy, 2023 ONLTB 57134

Date: 2023-08-21

File Number: LTB-L-003111-23

In the matter of: 301, 3532 DOWNPATRICK RD GLOUCESTER
ON K1V8T5

Between: Starlight Canadian Residential Growth Fund III Landlord

And

Marlon McKoy Tenants
Windy Louison

Starlight Canadian Residential Growth Fund III (the 'Landlord') applied for an order to terminate the tenancy and evict Marlon McKoy and Windy Louison (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on July 20, 2023.

The Landlord's Legal Representative, Krizia Hernandez, and the Tenant, Marlon McKoy, attended the hearing. The Tenant did not have the opportunity to speak to Tenant Duty Counsel as a representative from the Ottawa region was not available at the time the Tenant made the request. The Tenant confirmed he has the authority to speak on behalf of the other Tenant.

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 \$1,031.60. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$33.92. This amount is calculated as follows: \$1,031.60 x 12, divided by 365 days.

5. The Tenants have paid \$1,364.93 to the Landlord since the application was filed.
6. The rent arrears owing to July 31, 2023 are \$6,990.99.
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 \$949.00 from the Tenants 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 \$13.06 is owing to the Tenants for the period from January 1, 2023 to July 20, 2023.
10. There is no dispute with respect to the arrears of rent owed to the Landlord.
11. The Tenant testified he contacted a social agency to assist with the rent arrears owing to the Landlord. He stated that a payment of \$6,944.09 is in the process of being sent to the Landlord and should be received by the Landlord within the next couple of weeks.
12. The Landlord's Legal Representative submitted that the Landlord has not received the funds as of the hearing date however the Landlord was amiable to a standard eviction order with a postponement of the termination date to August 31, 2023 to afford time for the funds to be posted to the Tenant's account once received.
13. 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 1, 2023 pursuant to subsection 83(1)(b) 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 Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$8,234.37 if the payment is made on or before August 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$9,291.75 if the payment is made on or before September 1, 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 September 1, 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 Tenant must move out of the rental unit on or before September 1, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$5,835.95. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$33.92 per day for the use of the unit starting July 21, 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 September 1, 2023, the Tenants 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 1, 2023, then starting September 2, 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 2, 2023.

August 21, 2023

Date Issued

Susan Priest

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 March 2, 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 August 31, 2023

Rent Owing To August 31, 2023	\$9,413.30
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$1,364.93
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Total the Tenants must pay to continue the tenancy	\$8,234.37

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before September 1, 2023

Rent Owing To September 30, 2023	\$10,470.68
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$1,364.93
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Total the Tenants must pay to continue the tenancy	\$9,291.75

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

Rent Owing To Hearing Date	\$7,976.94
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$1,364.93
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	- \$949.00
Less the amount of the interest on the last month's rent deposit	- \$13.06
Total amount owing to the Landlord	\$5,835.95
Plus daily compensation owing for each day of occupation starting July 21, 2023	\$33.92 (per day)