



Order under Section 69 Residential Tenancies Act, 2006

Citation: Gaslard - berger v Pearsell, 2023 ONLTB 55874

Date: 2023-08-11

File Number: LTB-L-023010-23

In the matter of: B, 33 GLENELG ST E LINDSAY
ON K9V1Y8

Between: Mary Gaslard - Berger and Rejean Berger Landlordss

And

Kristine Pearsell and Sabrina Mcisaac Tenants

Mary Gaslard - berger and Rejean Berger (the 'Landlordss') applied for an order to terminate the tenancy and evict Kristine Pearsell and Sabrina Mcisaac (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

This application was heard by videoconference on August 3, 2023. The Tenant, Kristine Pearsell, attended the hearing. The Landlord was represented at the hearing by Carrie Aylwin.

Determinations:

Preliminary Issue – Tenants Participation

1. At 1:30 PM neither Tenant had signed into the hearing. I proceeded to hear the matter with the Landlords' uncontested evidence.
2. At 1:53 PM the Tenant, Kristine Pearsell, signed into the hearing. When asked why she was late, she told the Board she was involved in a criminal court proceeding that did not finish until 1:12 PM.
3. That may be the case, but that still does not explain why she did not sign into the hearing room until 1:53 PM. Further, there are two Tenants listed on the application. I was not provided any explanation as to why the second Tenant did not sign into the hearing.
4. A party to a hearing is expected to show up on time and be prepared to proceed. Circumstances do arise that may prevent a party from showing up on time. However, a party is expected to exercise proper diligence if they are going to be late.
5. The Tenants were aware, Ms. Pearsell, had multiple legal proceedings on the same day. They could have exercised diligence and made sure Ms. Mcisaac attended the hearing. If

that was not possible, they could have reached out to the Board to reschedule this hearing, or they could have sent an agent to the hearing to ask for an adjournment.

6. Finally, they were aware the Landlords had a representative. They could have advised the Landlords' representative prior to the hearing date they had a scheduling conflict.
7. I have considered the circumstances and find the Tenants did not act with reasonable diligence. Therefore, I find it appropriate determine this matter based on the Landlords' uncontested evidence.

L1 Application

8. 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.
9. As of the hearing date, the Tenants were still in possession of the rental unit.
10. The lawful rent is \$1,400.00. It is due on the 1st day of each month.
11. Based on the Monthly rent, the daily rent/compensation is \$46.03. This amount is calculated as follows: \$1,400.00 x 12, divided by 365 days.
12. The Tenants have paid \$1,800.00 to the Landlords since the application was filed.
13. The rent arrears owing to August 31, 2023, are \$7,400.00.
14. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The Landlords collected a rent deposit of \$1,400.00 from the Tenants and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
16. Interest on the rent deposit, in the amount of \$18.99 is owing to the Tenants for the period from January 18, 2023, to August 3, 2023.
17. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**

- \$7,586.00 if the payment is made on or before August 22, 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 August 22, 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 does not pay the amount required to void this order the Tenants must move out of the rental unit on or before August 22, 2023**
- 5. If the Tenants does not void the order, the Tenants shall pay to the Landlords \$4,905.10. 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 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 Landlords compensation of \$46.03 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 does not pay the Landlords the full amount owing on or before August 22, 2023, the Tenants will start to owe interest. This will be simple interest calculated from August 23, 2023, at 6.00% annually on the balance outstanding.
- 8. If the unit is not vacated on or before August 22, 2023, then starting August 23, 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 Landlords on or after August 23, 2023.

August 11, 2023

Date Issued

Bryan Delorenzi

Member, Landlords 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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on February 23, 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 22, 2023

Rent Owing To August 31, 2023	\$9,200.00
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$1,800.00
Total the Tenants must pay to continue the tenancy	\$7,586.00

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

Rent Owing To Hearing Date	\$7,938.09
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$1,800.00
Less the amount of the last month's rent deposit	- \$1,400.00
Less the amount of the interest on the last month's rent deposit	- \$18.99
Total amount owing to the Landlords	\$4,905.10
Plus daily compensation owing for each day of occupation starting August 4, 2023	\$46.03 (per day)