



Order under Section 69 Residential Tenancies Act, 2006

Citation: Moore v Armstrong, 2023 ONLTB 54404

Date: 2023-08-04

File Number: LTB-L-045279-23

In the matter of: 70, 53 TAUNTON RD E
OSHAWA ON L1G3T6

Between: Christopher Moore Landlords
Alisha Cain

And

Sara Jean Armstrong Tenants
Cynthia Patterson
Raheem John
Zackeem John

Christopher Moore and Alisha Cain (the 'Landlords') applied for an order to terminate the tenancy and evict Sara Jean Armstrong, Cynthia Patterson, Raheem John and Zackeem John (the 'Tenants') because

- the Tenants did not pay the rent that the Tenants owe (**L1 application**).
- the Tenants, another occupant of the rental unit or a person the Tenants permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex (**L2 application**).

This application was heard by videoconference on July 26, 2023. Only the Landlords attended the hearing.

As of 9:30am, the Tenants were not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

L1 application:

1. The Landlords 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 \$2,500.00. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$82.19. This amount is calculated as follows: \$2,500.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to July 31, 2023 are \$8,200.00.
7. The Landlords incurred costs of \$186.00 for filing the application and are entitled to reimbursement of those costs.
8. The Landlords collected a rent deposit of \$2,500.00 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.
9. Interest on the rent deposit, in the amount of \$67.12 is owing to the Tenants for the period from June 30, 2022 to July 26, 2023.
10. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

L2 application:

11. The Landlord's L2 application is based on an N7 notice of termination served to the Tenants on May 23, 2023 with a termination date of June 2, 2023. The N7 notice alleges that the Tenants have seriously impaired the safety of another person within the residential complex.
12. The residential complex is a Condominium. The Landlords own the single unit.
13. On August 30, 2022, the Landlords received an email complaint from the Condo Corp. advising that one of the Tenants was smoking in the hallway of the residential complex and that their children were banging on other resident's front doors.
14. On April 24, 2023, the Landlords received a letter from the Condo Corp. advising that the Tenants were harassing other residents of the residential complex by screaming at them in the hallways and outside of the building.
15. The Landlord's N7 notice is served pursuant to section 66(1) of the *Residential Tenancies Act, 2006, S.O. 2006* (the Act) which states:

66 (1) A landlord may give a tenant notice of termination of the tenancy if,

- (a) an act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously impaired the safety of any person; and
- (b) the act or omission occurs in the residential complex.

16. Based on the evidence before the Board, I am not satisfied that the Tenants have seriously impaired the safety of another person within the residential complex. As such, the L2 application must be dismissed.
17. In my view the Tenant's conduct although inappropriate, does not rise to the level of serious impairment of safety as set out in section 66(1) of the Act. There was no evidence to support that another person's safety was impaired or that there was a risk of impairment to someone else's safety. Further, the Landlord's did not witness any of these incidents and the individuals allegedly harassed by the Tenants were not present to provide testimony regarding the impact of the incidents.

It is ordered that:

L1 application:

1. The tenancy between the Landlords and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlords or to the LTB in trust:**
 - \$10,886.00 if the payment is made on or before August 15, 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 August 15, 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 August 15, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$5,455.82. 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 owe 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 \$82.19 per day for the use of the unit starting July 27, 2023 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlords the full amount owing on or before August 15, 2023, the Tenants will start to owe interest. This will be simple interest calculated from August 16, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before August 15, 2023, then starting August 16, 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 August 16, 2023.

L2 application:

10. The Landlord's L2 application is dismissed.

August 4, 2023
Date Issued

Fabio Quattrociochi
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 February 16, 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 15, 2023

Rent Owing To August 31, 2023	\$10,700.00
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	\$10,886.00

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

Rent Owing To Hearing Date	\$7,836.94
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	- \$2,500.00
Less the amount of the interest on the last month's rent deposit	- \$67.12
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	\$5,455.82
Plus daily compensation owing for each day of occupation starting July 27, 2023	\$82.19 (per day)