



Order under Section 69 Residential Tenancies Act, 2006

Citation: Torto v Brott, 2023 ONLTB 51873

Date: 2023-07-

27 File Number: LTB-L-
008988-23

In the matter of: C, 102 SARAH ST
BRANTFORD ON N3S3A5

Between: Urbano Torto Landlords
Anna Torto

And

Kenneth Alliston Brott Tenants Irma Louise Brott

Urbano Torto and Anna Torto (the 'Landlords') applied for an order to terminate the tenancy and evict Kenneth Alliston Brott and Irma Louise Brott (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on July 4, 2023.

The Landlords and the Tenants attended the hearing. The Landlords' Legal Representative K. Shmuir and Tenants' Legal Representative A. Barber were also present.

Determinations:

Preliminary issue: What is the lawful rent?

1. The Tenants' Legal Representative stated that the Tenants were contesting the lawful rent. The Landlord's application claims the monthly rent is \$1204.00 and the Tenants assert it is \$962.20.
2. The Tenants moved into the property in mid-2018. The Tenants were paying \$962.20 per month as rent, in 2021. The Landlords increased the rent to \$1,175.00 Starting January 1,

2022 by sending a new lease agreement to the Tenants. The Tenants paid \$1,175.00 each month during the period January 1, 2022 to December 1, 2022.

3. Section 135.1 of the *Residential Tenancies Act, 2006* (the “Act”) states:

Rent increase deemed not void

135.1 (1) An increase in rent that would otherwise be void under subsection 116 (4) is deemed not to be void if the tenant has paid the increased rent in respect of each rental period for at least 12 consecutive months.

4. As the Tenants \$1,175.00 each month for at least 12 consecutive months, that amount was deemed to be the lawful rent as of January 1, 2023. The Tenants stopped paying increased rent starting from January 1, 2023.
5. Based on the Tenant’s evidence, the Tenants were served with a N1 notice of rent increase on September 23, 2022 to increase the rent to \$1,204.00 effective January 1, 2023. I find that this was lawful increase of not more than 2.5%, which is the amount permitted by the 2023 guideline. Hence the lawful rent became \$1204.00 as of January 1, 2023.
6. 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.
7. As of the hearing date, the Tenants were still in possession of the rental unit.
8. The lawful rent is \$1,204.00. It is due on the 1st day of each month.
9. Based on the Monthly rent, the daily rent/compensation is \$39.58. This amount is calculated as follows: $\$1,204.00 \times 12$, divided by 365 days.
10. The Tenants have paid \$5,775.00 to the Landlords since the application was filed.
11. The Tenants testified that also paid January 2023 rent, but the Landlord Anna Torto testified that the rent was never deposited in the Landlord’s account. Based on the fact that the Tenant did not present any evidence that they paid the rent for January 2023, I will go by the amount that the Landlords are claiming on their application.
12. The rent arrears owing to July 31, 2023 are \$2,653.00.
13. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. The Landlords collected a rent deposit of \$1,175.00 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.

15. Interest on the rent deposit, in the amount of \$31.48 is owing to the Tenants for the period from December 1, 2021 to July 4, 2023.

Section 83 considerations

- 16. 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 grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
- 17. The Landlords are a retired couple and need the rent to supplement their income.
- 18. The Tenants have no other considerations except that they stopped paying because they were contesting the lawful rent. The Tenant requested the Board to consider a payment plan of \$120.00 each month to cover up the rent arrears.
- 19. The Landlord's Legal Representative requested the Board for a standard order or a maximum of twelve-month payment plan.
- 20. Based on the evidence before me I am willing to give the Tenants a chance to preserve their tenancy by granting a payment plan for 18 months.

It is ordered that:

- 1. The Tenants shall pay to the Landlord \$2,839.00 for arrears of rent up to July 31, 2023, and costs.
- 2. The Tenant shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:
 - a) On or before August 15, 2023 \$150.00
 - b) On or before September 15, 2023 \$150.00
 - c) On or before October 15, 2023 \$150.00
 - d) On or before November 15, 2023 \$150.00
 - e) On or before December 15, 2023 \$150.00
 - f) On or before January 15, 2024 \$150.00
 - g) On or before February 15, 2024 \$150.00
 - h) On or before March 15, 2024 \$150.00
 - i) On or before April 15, 2024 \$150.00
 - j) On or before May 15, 2024 \$150.00
 - k) On or before June 15, 2024 \$150.00
 - l) On or before July 15, 2024 \$150.00

- m) On or before August 15, 2024 \$150.00
- n) On or before September 15, 2024 \$150.00
- o) On or before October 15, 2024 \$150.00
- p) On or before November 15, 2024 \$150.00
- q) On or before December 15, 2023 \$150.00
- r) On or before January 15, 2025 \$150.00
- s) On or before February 15, 2023 \$139.00

3. The Tenant shall also pay to the Landlord new rent on time and in full as it comes due and owing for the period August 1, 2023 to February 1, 2025, or until the arrears are paid in full, whichever date is earliest.
4. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after July 31, 2023.

July 27, 2023

Date Issued

Sheena Brar

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.