



Order under Section 69 Residential Tenancies Act, 2006

Citation: A.G.SECURE PROPERTY MANAGEMENT INC v Barr, 2023 ONLTB 52213

Date: 2023-07-25

File Number: LTB-L-043394-22

In the matter of: A, 67 CINDY LEE CRES ORILLIA
ON L3V7P2

Between: A.G.SECURE PROPERTY MANAGEMENT INC Landlord

And

Carol-ann Barr and Richard Barr Tenant

Review Order

A.G.SECURE PROPERTY MANAGEMENT INC (the 'Landlord') applied for an order to terminate the tenancy and evict Carol-ann Barr and Richard Barr (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

That application was resolved by order LTB-L-043394-22 issued on March 28, 2023.

The Tenants' requested a review of the Order issued on March 28, 2023 claiming they did not receive the Notice of Hearing.

On April 11, 2023, interim order LTB-L-043394-22-RV-IN was issued staying the Order issued on March 28, 2023.

The Tenants' review request was heard by videoconference on April 26, 2023.

The Landlord, Robert Hilton, the Landlord's Representative, Nicole Fazzari and the Tenants attended the hearing.

Determinations:

Review:

1. The Tenants did not attend the hearing held on March 1, 2023. . I find that the Tenants had adequate notice of the hearing and they had an adequate opportunity to participate in the hearing held on March 1, 2023 because of the following:
2. The Tenants received the Board's mail but didn't open it because they had a payment agreement with the Landlord which they thought resolved the Landlord's application. The Landlord's emails dated January 17, 2023, and February 9, 2023 referenced the hearing date which the Tenant, CB denied receiving even though she verified the email address used by the Landlord was correct. The Tenant, RB also confirmed receiving a call from the Landlord's Representative on the day of the hearing, asking him to join the video hearing which he explained he wasn't able to join due to the lack of technology
2. The request to review order issued on March 28, 2023 however, is granted on the basis that the Board's file shows a payment agreement was filed pursuant to section 206 of the Act on February 23, 2023 which corroborates' the Tenants' testimony that they thought the application was resolved. The Board Order makes no reference of the payment agreement as a consideration under section 83 of the Act. This is a serious error or omission contained in the order which has the potential to change the outcome of the order and therefore the request to review order issued on March 28, 2023 is granted.

L1 Application:

3. The Landlord 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. The Tenantss provided copies of their e-transfer payments for June and September 2022 which did not void the N4 Notice of termination as the Tenants's claimed.
4. As of the hearing date, the Tenants are still in possession of the rental unit.
5. The lawful rent is \$1,452.00. It is due on the 1st day of each month.
6. Based on the Monthly rent, the daily rent/compensation is \$47.74. This amount is calculated as follows: \$1,452.00 x 12, divided by 365 days.
7. The Tenants has paid \$4,470.00 to the Landlord since the application was filed.
8. The rent arrears owing to April 30, 2023 are \$9,838.40.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

10. The Landlord collected a rent deposit of \$1,452.00 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.
11. Interest on the rent deposit, in the amount of \$44.75 is owing to the Tenants for the period from February 1, 2022 to April 26, 2023.
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 May 31, 2023 pursuant to subsection 83(1)(b) of the Act.
13. The Tenants have lived in the unit for three years. The Tenant, CB started receiving benefits under CPP-D and is awaiting a decision under Ontario Disability Support Program for additional income. There were no reasons provided for the non-payment of rent. The Tenants proposed at 33 month payment plan of \$300.00 which is not reasonable. I am not satisfied based on their payment history that this tenancy can be preserved. This order doesn't consider any payments made by the Tenants after April 26, 2023.

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:**
 - \$14,138.40 if the payment is made on or before July 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$15,590.40 if the payment is made on or before August 5, 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 August 5, 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 August 5, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$8,111.17. 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 \$47.74 per day for the use of the unit starting April 27, 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 August 5, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 6, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before August 5, 2023, then starting August 6, 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 6, 2023.

July 25, 2023

Date Issued

Sandra Macchione

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 6, 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 July 31, 2023

Rent Owing To July 31, 2023	\$18,664.40
Application Filing Fee	\$244.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,770.00
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	\$14,138.40

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before August 5, 2023

Rent Owing To August 31, 2023	\$20,116.40
Application Filing Fee	\$244.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,770.00
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	\$15,590.40

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

Rent Owing To Hearing Date	\$14,097.64
Application Filing Fee	\$244.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,770.00
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	- \$1,416.80
Less the amount of the interest on the last month's rent deposit	- \$43.67

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	\$8,111.17
Plus daily compensation owing for each day of occupation starting April 27, 2023	\$47.74 (per day)