



Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: Good v Sanderson, 2023 ONLTB 49442

Date: 2023-07-12

File Number: LTB-L-050476-22-BIR

In the matter of: Two, 271 Main St. S
Mount Forest ON N0G2L1

Between: Darryl Good Landlord

And

Les Sanderson Tenants
Louise Pitre
Justin Pitre
Ivy Toner

Darryl Good (the 'Landlord') applied for an order to terminate the tenancy and evict Les Sanderson, Louise Pitre, Justin Pitre and Ivy Toner (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was resolved by order LTB-L-050476-22 issued on April 26, 2023.

On May 29, 2023, the Tenants filed a motion to void the order and included evidence of payments that were made prior to the March 28, 2023 hearing. These payments were not listed on the L1/L9 update sheet that the Landlord submitted as evidence at the March 28, 2023 hearing.

On May 30, 2023 interim order LTB-L-050476-22-BIR-IN was issued, staying the order issued on April 26, 2023 and directing the application to Board Review.

This Board Initiated Review (BIR) was heard in by videoconference on June 26, 2023. The Landlord and the Tenant, Louise Pitre, attended the hearing.

Determinations:

1. On the basis of the submissions made in the hearing, I am satisfied that a serious error occurred in the proceedings. At the March 28, 2023 hearing, I find the Landlord failed to disclose the amounts of all payments he received since the application was filed. The evidence before me establishes there were a number of payments made prior to March 28, 2023 which total more than \$1,512.30 (the amount the Landlord said was paid at the March 28th hearing). The review is therefore granted and the matter heard again.
2. 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

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rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.

3. As of the hearing date, the Tenants were still in possession of the rental unit.
4. The lawful rent is \$709.71. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$23.33. This amount is calculated as follows: $\$709.71 \times 12$, divided by 365 days.
6. The Tenants have paid \$7,628.26 to the Landlord since the application was filed. I arrive at this amount based on the documentary evidence submitted by the Tenants from Ontario Disability Support Program (ODSP) and the County of Wellington indicating the Tenants had set up direct payment to the Landlord since November 2022, with the following payments made:
 - November 2022 - \$881.00 and \$1,967.00
 - December 2022 - \$522.00
 - January 2023 to the hearing date - \$709.71 per month
7. The rent arrears owing to June 30, 2023 are \$784.40. While the Landlord claims that the Tenants owed 2 months of rent (\$1,417.82) because he did not receive payments for January 2023 and March 2023, I do not find the Landlord's evidence credible. I say this because the Landlord has shown a tendency to mislead the Board. At the previous hearing on March 28, 2023, the Landlord claimed the Tenants had paid \$1,512.30 since the application was filed. This was clearly incorrect based on the evidence before me. I found the Tenants documentary evidence to be credible and reliable with respect to the payments made to the Landlord. I therefore prefer the Tenants' evidence over the Landlord's in arriving at my finding above.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$400.00 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.
10. Interest on the rent deposit, in the amount of \$56.00 is owing to the Tenants for the period from February 1, 2015 to June 26, 2023.
11. 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 Tenants and find that it would not be unfair to postpone the eviction until July 31, 2023 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. Order LTB-L-050476-22, issued on April 26, 2023, is cancelled and cannot be enforced.
2. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.

3. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$1,680.11 if the payment is made on or before July 31, 2023. See Schedule 1 for the calculation of the amount owing.
4. 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 July 31, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
5. **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 July 31, 2023**
6. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$411.27. 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.
7. The Tenants shall also pay the Landlord compensation of \$23.33 per day for the use of the unit starting June 27, 2023 until the date the Tenants moves out of the unit.
8. If the Tenants do not pay the Landlord the full amount owing on or before July 23, 2023, the Tenants will start to owe interest. This will be simple interest calculated from July 24, 2023 at 6.00% annually on the balance outstanding.
9. If the unit is not vacated on or before July 31, 2023, then starting August 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 1, 2023.

July 12, 2023
Date Issued

 Khalid Akram
 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 1, 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 July 31, 2023

Rent Owing To July 31, 2023	\$9,122.37
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$7,628.26
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$1,680.11

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

Rent Owing To Hearing Date	\$8,309.53
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$7,628.26
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	- \$400.00
Less the amount of the interest on the last month's rent deposit	- \$56.00
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total amount owing to the Landlord	\$411.27
Plus daily compensation owing for each day of occupation starting June 27, 2023	\$23.33 (per day)