



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

Citation: Rupesh Desai v Florencia Pereyra olguin, 2023 ONLTB 47210

Date: 2023-06-29

File Number: LTB-L-074492-22

In the matter of: 34, 69 LEXINGTON AVE
ETOBICOKE ON M9V2G9

Between: Rupesh Desai Landlord

And

Florencia Pereyra Olguin Tenants
Harry Molina Portobanco

Review Order

Rupesh Desai (the 'Landlord') applied for an order to terminate the tenancy and evict Florencia Pereyra Olguin and Harry Molina Portobanco (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was resolved by order LTB-L-074492-22 issued on May 18, 2023.

On May 19, 2023, the Tenants requested a review of the order and that the order be stayed until the request to review the order is resolved.

On May 23, 2023 interim order LTB-L-074492-22-RV-IN was issued, staying the order issued on May 19, 2023.

This application was heard in by videoconference on June 19, 2023.

The Landlord's Representative, Linda Flores and the Tenant, Florencia Pereyra Olguin attended the hearing.

Determinations:

Review:

1. The Tenant stated she could not attend the hearing held on May 11, 2023 because of a medical emergency and she had go the hospital.
2. A medical letter was provided that confirmed that the Tenant visited the emergency department in the hospital on May 23, 2023 which is the same day as the hearing. The Order issued on May 18, 2023, also notes that non-authorized Agent, Ramon Medina attended the hearing on the Tenants' behalf and informed the Member the Tenant was in hospital. The Tenants sent someone to represent them, but without authorization the hearing proceeded based on the Landlord's evidence only.
3. On the basis of the submissions made at the hearing, I am satisfied the Tenants were not reasonably able to participate in the proceeding because of unexpected circumstances.

L1 Application:

1. 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.
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 paid \$3,500.00 to the Landlord since the application was filed.
6. The rent arrears owing to June 30, 2023 are \$21,500.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$2,500.00 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.
9. Interest on the rent deposit, in the amount of \$38.70 is owing to the Tenants for the period from November 6, 2022 to June 19, 2023.
10. 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. The Tenant Started working a month and a half ago and requested a 21 month payment plan which is not reasonable given the arrears outstanding.

It is ordered that:

1. The request to review order LTB-L-074492-22 issued on May 18, 2023 is granted. The order is cancelled and cannot be enforced.
2. Order LTB-L-074492-22 issued on May 18, 2023 is cancelled and replaced as follows:
3. The tenancy between the Landlord and the Tenants is terminated unless the Tenants voids this order.
4. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$21,686.00 if the payment is made on or before June 30, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$24,186.00 if the payment is made on or before July 10, 2023. See Schedule 1 for the calculation of the amount owing.
5. 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 10, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
6. **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 10, 2023**
7. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$18,208.91. 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.
8. The Tenants shall also pay the Landlord compensation of \$82.19 per day for the use of the unit starting June 20, 2023 until the date the Tenants move out of the unit.
9. If the Tenants do not pay the Landlord the full amount owing on or before July 10, 2023, the Tenants will start to owe interest. This will be simple interest calculated from July 11, 2023 at 6.00% annually on the balance outstanding.
10. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
11. If the unit is not vacated on or before July 10, 2023, then starting July 11, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

12. 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 July 11, 2023.

June 29, 2023
Date Issued

Sandra Macchione
Member, Landlord 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 January 11, 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.

*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

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 June 30, 2023

Rent Owing To June 30, 2023	\$25,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$3,500.00
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	\$21,686.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before July 10, 2023

Rent Owing To July 31, 2023	\$27,500.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$3,500.00
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	\$24,186.00

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

Rent Owing To Hearing Date	\$24,061.61
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$3,500.00
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	- \$2,500.00
Less the amount of the interest on the last month's rent deposit	- \$38.70

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	\$18,208.91
Plus daily compensation owing for each day of occupation starting June 20, 2023	\$82.19 (per day)