



Order under Section 69 / 88.2 Residential Tenancies Act, 2006

Citation: Szabo v Gillard, 2023 ONLTB 47202

Date: 2023-06-29

File Number: LTB-L-062267-22

In the matter of: Upper Level-105 Westmount Road East Kitchener,
ON N2M 4Y6

Between: Karen Szabo Landlords
Kyle Szabo
Richard Szabo

And

Adam Gillard Tenants
Stephanie Stroeder

Karen Szabo, Kyle Szabo and Richard Szabo (the 'Landlords') applied for an order to terminate the tenancy and evict Adam Gillard and Stephanie Stroeder (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

Further, the Landlords applied for an order to terminate the tenancy and evict the Tenants because the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlords or another tenant;

Further, the Landlords applied for an order to terminate the tenancy and evict the Tenants because the Tenants have been persistently late in paying the Tenants' rent.

The Landlords also claimed compensation for each day the Tenants remained in the unit after the termination date.

Further, the Landlords also applied for an order requiring the Tenants to pay the Landlords' reasonable out-of-pocket expenses that are the result of the Tenants' failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

This application was heard by videoconference on June 21, 2023.

The Landlords Karen Szabo, Richard Szabo, the Landlords' Legal Representative Barrett M. Beaudoin, the Tenant Adam Gillard ('AG') and the Guarantor Chris Carter ('CC') attended the hearing.

Determinations:

Preliminary Issue – Guarantor named as a Tenant

1. In advance of the hearing, I had raised a preliminary issue with respect to documentation filed in advance of the hearing by the named tenant CC, which outlined that he was a guarantor for the Tenants and never resided in the unit.
2. CC testified that while he did assist the Tenants with paying rent, he had only ever provided money directly to the Tenants and never to the Landlords.
3. With respect to Guarantors, the Board's *Interpretation Guideline 11* states, "*The LTB will not make an order against guarantors because they are not tenants. The RTA does not give the LTB the authority to deal with such claims, even if they are related to the issue of rent arrears*".
4. The Landlords' Legal Representative submitted that CC was included as a party to prevent him from potentially subleasing the unit back to AG. While that is certainly a concern, I was not satisfied based on the evidence provided that CC is a Tenant and the motion to remove him as a party was granted.

L1 Application

5. 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.
6. As of the hearing date, the Tenants were still in possession of the rental unit.
7. The lawful rent is \$2,562.50. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$84.25. This amount is calculated as follows: \$2,562.50 x 12, divided by 365 days.
9. The Tenants have not made any payments since the application was filed.
10. The rent arrears owing to June 30, 2023 are \$27,687.50.
11. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. 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.

13. Interest on the rent deposit, in the amount of \$76.54 is owing to the Tenants for the period from April 1, 2022 to June 21, 2023.

L2 Application

14. The Landlords opted to just proceed with their claim for outstanding utility expenses under s. 88.2 of the *Residential Tenancies Act, 2006* (the 'Act').
15. The Tenants failed to pay the hot water tank's rental costs that they were required to pay under the terms of the tenancy agreement.
16. The Landlords have incurred reasonable out-of-pocket expenses of \$683.10 as a result of the Tenants' failure to pay hot water heater rental costs
17. AG acknowledged the outstanding utility expenses, explaining that he had no knowledge of the account and would have paid it had he been aware of this obligation.

Section 83 Considerations

18. AG testified that he planned on vacating the unit by June 30, 2023. Due to the Board's order issuance policy, the Tenants will be given until July 10, 2023 to either void the order or to vacate the unit.
19. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would not be unfair to postpone the eviction until July 10, 2023 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

20. The tenancy between the Landlords and the Tenants is terminated unless the Tenants void this order.
21. **The Tenants may void this order and continue the tenancy by paying to the Landlords:**
 1. \$27,873.50 if the payment is made on or before June 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 2. \$30,436.00 if the payment is made on or before July 10, 2023. See Schedule 1 for the calculation of the amount owing.
22. 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.

23. **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.**
24. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$24,503.71. 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 owes on the rent deposit are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
25. The Tenants shall also pay the Landlords compensation of \$84.25 per day for the use of the unit starting June 22, 2023 until the date the Tenants move out of the unit.
26. The Tenants shall also pay to the Landlords \$683.10, which represents the reasonable out-of-pocket expenses the Landlords have incurred as a result of the unpaid utility costs.
27. If the Tenants do not pay the Landlords 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.
28. The Landlords or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
29. If the unit is not vacated on or before July 10, 2023, then starting July 11, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
30. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after July 11, 2023.

June 29, 2023
Date Issued

Jagger Benham
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 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.

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 | \$27,687.50 |
| Application Filing Fee | \$186.00 |
| Total the Tenants must pay to continue the tenancy | \$27,873.50 |

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 | \$30,250.00 |
| Application Filing Fee | \$186.00 |
| Total the Tenants must pay to continue the tenancy | \$30,436.00 |

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

| | |
|---|----------------------|
| Rent Owing To Hearing Date | \$26,894.25 |
| Application Filing Fee | \$186.00 |
| 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 | - \$76.54 |
| Total amount owing to the Landlords | \$24,503.71 |
| Plus daily compensation owing for each day of occupation starting June 22, 2023 | \$84.25 (per day) |