



Order under Section 69 Residential Tenancies Act, 2006

Citation: 2697255 Ontario Inc. v Katrina Duggan, 2023 ONLTB 46731

Date: 2023-06-28

File Number: LTB-L-078625-22

In the matter of: 2466 KING RD
KING CITY ON L7B1J7

Between: 2697255 Ontario Inc. Landlord

And

Donald Woodward and Katrina Duggan Tenant

2697255 Ontario Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Donald Woodward and Katrina Duggan (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

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

The Landlord and the Tenant attended the hearing on her behalf and also on behalf of the Tenant Donald Woodward

Determinations:

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant 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 Tenant was still in possession of the rental unit.
3. The lawful rent is \$2,100.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$69.04. This amount is calculated as follows: \$2,100.00 x 12, divided by 365 days.
5. The Tenant has paid \$6,700.00 to the Landlord since the application was filed.
6. The rent arrears owing to June 30, 2023 are \$10,500.00.
7. The Tenant disagrees with the amount of arrears being alleged but does not know what the arrears should be and submits that perhaps it is only \$6,000.00 in arrears. The Tenant acknowledges that they fell behind and has not paid rent but she states she has tried to make payments.
8. Based on the evidence and submissions before me, and on a balance of probabilities, I am satisfied that the arrears owing to June 30, 2023 are \$10,500.00. While the Tenant

suggested what she thought the arrears were, the Tenant was unable to provide any evidence regarding what she believed the rent arrears were. Documentation provided by the Landlord show that it sent correspondence to the Tenant on December 16, 2022 and also on June 13, 2022 informing the Tenant of the amount of arrears to which the Tenant did not respond.

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 \$2,100.00 from the Tenant 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 \$56.41 is owing to the Tenant for the period from November 15, 2021 to June 19, 2023.

Relief from eviction:

12. Pursuant to section 83(2) of the Act, the Board is required to consider “all of the circumstances” to determine whether or not it would be unfair to refuse eviction, delay eviction or put in place some sort of conditional order.
13. The Tenant at the hearing is 56 years old and has resided in the rental unit for approximately 2 years. The Tenant wants to preserve their tenancy and submits they could pay \$400.00 per week to the Landlord for a total of \$1,600.00 towards arrears per month and also pay rent of \$2,100.00 per month. The Tenant also submitted that she could also pay \$1,000.00 to the Landlord this week. Based on the Tenant’s proposal, she would be paying a total of \$3,700.00 per month for rent and arrears. No information or documentation was provided at the hearing to support the affordability of the Tenants’ repayment proposal.
14. The Tenant submits that she is now back to work after a medical issue which occurred two months ago and she had to deal with some health issues regarding her mother which resulted in her falling behind in rent payments but she is now trying to make amends.
15. The Landlord opposes a payment plan with the Tenant because historically the Tenant has been persistently late in making payments and the Tenant’s past behaviour has proven she cannot follow a payment plan or pay the full rent. The Landlord tendered into evidence a chart detailing that the Tenant has been late with paying rent 16 out of 19 months during the tenancy and submits that the Tenant cannot abide with a payment plan based on the irregularity of paying rent.
16. The Landlord’s Legal Representative submits that the Landlord is not in a position to continue with this tenancy as it is having to carry a mortgage on the rental unit with a high rate of interest and it would be prejudicial to continue on with this tenancy.
17. Upon review of the documentation provided at the hearing from the Landlord, the rent arrears appear to have started in October, 2022 with the Tenant not paying any rent for several months and then making some payments towards rent but did not pay the full rent due. I note that the Tenant stated her medical issue started two months ago which does not explain why the Tenants failed to pay rent for November and December, 2022. I also

note that two months ago, as detailed in the chart provided at the hearing, the Tenant did not pay rent for April, 2023 but did make some payments towards rent in May and June, 2023 albeit, not the full lawful rent.

18. While I accept that the Tenant has had difficulties, particularly with her personal and financial circumstances, they made no attempt to contact the Landlord to discuss their situation. I also heard no evidence as to whether the Tenant Donald Woodward is gainfully employed, what his income is and whether he could afford the payment plan proposed.
19. While the Tenant made a proposal to pay the rent and arrears at the hearing, the evidence shows that the Tenants have not been able to pay rent of \$2,100.00 per month and without having evidence of the affordability of the proposal, I am satisfied it would be unfair to the Tenant to order a payment plan where she cannot meet its terms. This tenancy, in my view, is not viable any longer and to prolong it would be prejudicial to the Landlord and unfair to the Tenant as the arrears are surmounting.
20. Given all of the evidence and submissions before me, I am not satisfied that it would be unfair to the Landlord to give the Tenants some additional time to move in light of the circumstances. Considering that the Tenant has had some personal issues they have had to overcome and that they would require some time to find alternative accommodations, I am prepared to delay eviction until the end of July, 2023. Although the Tenant requested 60 days notice, I am not prepared to grant a delay of more than a month given the quantum of the arrears. As a result, the eviction will be delayed to July 31, 2023.
21. 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 July 31, 2023 pursuant to subsection 83(1)(b) of the Act.
22. This order contains all of the reasons within it and no further reasons will be issued.

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:**
 - \$10,686.00 if the payment is made on or before June 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$12,786.00 if the payment is made on or before July 31, 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 July 31, 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 July 31, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$7,741.35. 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 \$69.04 per day for the use of the unit starting June 20, 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 July 9, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 10, 2023 at 6.00% annually on the balance outstanding.
8. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
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.

June 28, 2023
Date Issued

Heather Chapple
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 Tenant 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	\$17,200.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,700.00
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	\$10,686.00

B. 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	\$19,300.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,700.00
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	\$12,786.00

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

Rent Owing To Hearing Date	\$16,411.76
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,700.00
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	- \$2,100.00
Less the amount of the interest on the last month's rent deposit	- \$56.41
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	\$7,741.35
Plus daily compensation owing for each day of occupation starting June 20, 2023	\$69.04 (per day)