



Order under Section 69 Residential Tenancies Act, 2006

Citation: Kelsie Shafer v Michelle Shelley, 2023 ONLTB 45737

Date: 2023-06-26

File Number: LTB-L-001961-23

In the matter of: 375 MALABAR DR
KINGSTON ON K7M8X1

Between: Kelsie Shafer and Michael Kennedy Landlords

And

Jon Shelley and Michelle Shelley Tenants

Kelsie Shafer and Michael Kennedy (the 'Landlords') applied for an order to terminate the tenancy and evict Jon Shelley and Michelle Shelley (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on June 7, 2023. The Landlord, K. Shafer, and the Tenant, M. Shelley, attended the hearing. M. Shelley stated she was appearing on behalf of the Tenants.

Determinations:

1. The Landlords 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 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 \$2,200.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$72.33. This amount is calculated as follows: \$2,200.00 x 12, divided by 365 days.
5. The Tenants have paid \$12,700.00 to the Landlords since the application was filed.
6. The rent arrears owing to June 30, 2023 are \$2,700.00.

7. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.
9. 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 Landlords attempted to negotiate a repayment agreement with the Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
10. The Tenant testified that they have been unable to pay rent because they had to pay other bills and the holidays. The Tenant proposed a repayment plan of \$150.00 a month. The Tenant testified to their income and expenses.
11. The Landlord objected to the continuation of the tenancy. The Landlords have had to pay for maintaining the unit with their own funds.
12. I find it would be unfair to grant relief to the Tenants. The Tenant's evidence was that they prioritized other bills and the holidays over rent. This is not a positive consideration. Further, it would be unfair to impose the repayment plan on the Landlords as the Tenant's evidence regarding their income and expenses suggests they are unable to afford rent at the unit. In consideration of the foregoing, relief will not be granted.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated unless the Tenants voids this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlords or to the LTB in trust:**
 - \$2,886.00 if the payment is made on or before June 30, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$5,086.00 if the payment is made on or before July 7, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants has paid the full amount owing as ordered plus any additional rent that became due after July 7, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants does not pay the amount required to void this order the Tenants must move out of the rental unit on or before July 7, 2023**

5. If the Tenants does not void the order, the Tenants shall pay to the Landlords \$1,192.31. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlords compensation of \$72.33 per day for the use of the unit starting June 8, 2023 until the date the Tenants moves out of the unit.
7. If the Tenants does not pay the Landlords the full amount owing on or before July 7, 2023, the Tenants will start to owe interest. This will be simple interest calculated from July 8, 2023 at 6.00% annually on the balance outstanding.
8. The Landlords or the Tenants 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 7, 2023, then starting July 8, 2023, the Landlords 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 Landlords on or after July 8, 2023.

June 26, 2023
Date Issued

Camille Tancioco

Member, Landlords 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 8, 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	\$15,400.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$12,700.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlords 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	\$2,886.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before July 7, 2023

Rent Owing To July 31, 2023	\$17,600.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$12,700.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlords 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	\$5,086.00

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

Rent Owing To Hearing Date	\$13,706.31
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$12,700.00
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	- \$
Less the amount of the interest on the last month's rent deposit	- \$0.00

Less the amount the Landlords 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 Landlords	\$1,192.31
Plus daily compensation owing for each day of occupation starting June 8, 2023	\$72.33 (per day)