



Order under Section 69 Residential Tenancies Act, 2006

Citation: Starlight Canadian Residential Growth Fund II v Baldwin, 2023 ONLTB 42576

Date: 2023-06-13

File Number: LTB-L-049243-22

In the matter of: 120, 10 RUNNYMEDE RD
KINGSTON ON K7M2A1

Between: Starlight Canadian Residential Growth Fund II Landlord

And

Eric Prosser and Kim Baldwin Tenants

Starlight Canadian Residential Growth Fund II (the 'Landlord') applied for an order to terminate the tenancy and evict Eric Prosser and Kim Baldwin (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on March 15, 2023.

Only the Landlord's representative David Danielson attended the hearing.

As of 2:05 p.m., the Tenants were not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Preliminary Issue

1. The Landlord's representative requested the Board issue an *Ex-Parte Eviction Order* at a L1-L9 application hearing based upon the Landlord's submitted evidence of a signed *N9 – Notice to End your Tenancy* by the Tenants.
2. There was no L3 application filed with the Board nor any payment of an L3 application made to the Board. As a result, I do not have jurisdiction to make the order that the Landlord requests and thus it is denied. However, I do issue a voidable order below, and it would not preclude the Tenants from vacating in accordance with any *N9* notice they may have signed if that is their intention.

Determinations:

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 \$1,885.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$61.97. This amount is calculated as follows: \$1,885.00 x 12, divided by 365 days.
5. The Tenants have paid \$7,540.00 to the Landlord since the application was filed.
6. The rent arrears owing to March 31, 2023 are \$9,425.00.
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 \$1,795.00 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 \$9.10 is owing to the Tenants for the period from January 1, 2023 to March 15, 2023.
10. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$15,266.00 if the payment is made on or before June 24, 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 June 24, 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 do not pay the amount required to void this order the Tenants must move out of the rental unit on or before June 24, 2023**

5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$6,851.45. 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.
6. The Tenants shall also pay the Landlord compensation of \$61.97 per day for the use of the unit starting March 16, 2023 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before June 24, 2023, the Tenants will start to owe interest. This will be simple interest calculated from June 25, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before June 24, 2023, then starting June 25, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 June 25, 2023.

June 13, 2023

Date Issued

André-Paul Baillargeon-Smith

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 December 25, 2023 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 24, 2023

Rent Owing To June 30, 2023	\$22,620.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$7,540.00
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	\$15,266.00

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

Rent Owing To Hearing Date	\$16,009.55
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$7,540.00
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	- \$1,795.00
Less the amount of the interest on the last month's rent deposit	- \$9.10
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	\$6,851.45
Plus daily compensation owing for each day of occupation starting March 16, 2023	\$61.97 (per day)