



Order under Section 69 Residential Tenancies Act, 2006

Citation: Frank Caruana v Catia Gaspar, 2023 ONLTB 41206

Date: 2023-06-06

File Number: LTB-L-079913-22

In the matter of: 2nd floor, 1851 DUFFERIN ST
TORONTO ON M6E3P5

Between: Frank Caruana Landlord

And

Catia Gaspar Tenants
Joao Maltez

Frank Caruana (the 'Landlord') applied for an order to terminate the tenancy and evict Catia Gaspar and Joao Maltez (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

The application is amended to remove Laparia Gaspar as a Tenant because they are a minor and only an occupant of the rental unit.

This application was heard by videoconference on May 25, 2023.

The Landlord, the Landlord's daughter, Diane Wolczyk, and the Tenant, Catia Gaspar, attended the hearing. Ms. Gaspar indicated that she had the authority to speak on behalf of Joao Maltez. The Tenant also spoke with Tenant Duty Counsel on the hearing date.

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 \$2,400.00. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$78.90. This amount is calculated as follows: \$2,400.00 x 12, divided by 365 days.
5. The Tenants have paid \$900.00 to the Landlord since the application was filed.
6. The rent arrears owing to May 31, 2023 are \$11,500.00.
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 \$2,400.00 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 \$38.96 is owing to the Tenants for the period from October 1, 2022 to May 25, 2023.
10. The Tenant indicated that their brother passed away early in the year and funeral costs set them back from paying the rent. The Tenant is also expecting a large settlement amount by June 20th and believes that this amount will clear the rent arrears for the Landlord.
11. The Landlord was doubtful that the Tenants would come through on their payment due to the promises not being followed through in the past. The Landlord has been financially strained as a result of the non-payment of rent and the Landlord sought the earliest termination date due to the ongoing issues with the Tenants.
12. An oral decision was provided at the hearing. A standard order would provide the Tenants with the opportunity to void the order by June 19th which would be just shy of the date the Tenants expect their automobile accident settlement. I see no reason not to grant the additional time for the Tenants to pay the amount after their cheque clears for their settlement. The Tenant provided reassurance that the funds should clear by June 25th and they could pay the Landlord by this time.
13. 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 June 25, 2023 pursuant to subsection 83(1)(b) 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:**
 - \$14,086.00 if the payment is made on or before June 25, 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 have paid the full amount owing as ordered plus any additional rent that became due after June 25, 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 25, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$8,819.54. 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 \$78.90 per day for the use of the unit starting May 26, 2023 until the date the Tenant moves out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before June 17, 2023, the Tenants will start to owe interest. This will be simple interest calculated from June 18, 2023 at 6.00% annually on the balance outstanding.
8. The Landlord 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 June 25, 2023, then starting June 26, 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 June 26, 2023.

June 6, 2023**Date Issued**_____
Terri van Huisstede

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 December 26, 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.

*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 25, 2023

Rent Owing To June 30, 2023	\$14,800.00
Application Filing Fee	\$186.00

NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$900.00
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 are entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$14,086.00

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

Rent Owing To Hearing Date	\$11,972.50
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$900.00
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	- \$2,400.00
Less the amount of the interest on the last month's rent deposit	- \$38.96
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total amount owing to the Landlord	\$8,819.54
Plus daily compensation owing for each day of occupation starting May 26, 2023	\$78.90 (per day)