



Order under Section 69 Residential Tenancies Act, 2006

Citation: Mullen v Perry, 2023 ONLTB 39871

Date: 2023-05-29

File Number: LTB-L-047651-22

In the matter of: 27 Hillendale Avenue Kingston
ON K7M1S2

Between: Benjamin Edward Mullen Landlord

And

Jillian Ballance, Kobe Perry, Mark Perry and Tenants
Natasha Perry

Benjamin Edward Mullen (the 'Landlord') applied for an order to terminate the tenancy and evict Jillian Ballance, Kobe Perry, Mark Perry and Natasha Perry (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on March 27, 2023.

The following attended the hearing:

- Landlord's Legal Representative Dan Schofield,
- the Landlord,
- the Landlord's Agent property manager Nolan Hubbard, and
- the Tenants.

The Tenants declined to speak with Tenant Duty Counsel. The parties met privately to try to reach a resolution prior to the hearing but were unsuccessful.

Preliminary Issue:

The Landlord's Legal Representative indicated that the Tenants uploaded 37 files to the Tribunals Ontario Portal on March 21, 2023 with respect to s. 82 issues they wished to raise. They were not presented in accordance with Rule 19.4(1) of the Board's Rules of Procedure with respect to Disclosure and Evidence with a written description of the issues or in the required format. He submitted that Rule 19.7 should apply, and that I should exercise my discretion to not allow them to rely on that evidence at the hearing.

He submitted that the Tenants should not be afforded an opportunity to perfect their claims at the hearing but that they had the right to bring their own application, that the majority of their claims were ongoing issues or within the statutory limitation period, and that the Tenants would therefore not suffer prejudice if I were to refuse to consider their evidence.

I reserved my decision on this matter and proceeded with the hearing.

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 \$2,500.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$82.19. This amount is calculated as follows: \$2,500.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. Although the Tenants claimed in their testimony that they were not properly served with an N4 notice, the parties agree that rent arrears owing to March 31, 2023 are \$20,000.00.
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 \$2,500.00 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 \$72.77 is owing to the Tenants for the period from January 27, 2022 to March 27, 2023.
10. Essentially, the Tenants claim that because of unaddressed maintenance issues from a burst pipe in the basement, they stopped paying rent but agree to the amount of arrears owing and "would have paid if they were treated properly." They testified that they had already found new accommodations, were in the process of moving, and were vacating the rental unit on April 1, 2023.
11. I am satisfied on the basis of the testimony of the parties that any claims on the part of the Tenants can be adequately addressed through a Tenant application. The Tenants indicated that they are almost immediately vacating the rental unit, and therefore they will not suffer any ongoing prejudice as a result of not determining their issues about maintenance in the rental unit today. The arrears are considerable, and the Tenants have not paid any rent in 8 months which has placed financial strain on the private Landlord.

12. If the Tenants wish to pursue an application, the issues can best be determined after they have taken the opportunity to seek legal advice if required, to submit their evidence in the required format to permit an expeditious hearing of the merits of their claim, and to permit the Landlord an opportunity to adequately respond.
13. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the Tenants' agreement with the arrears owing and their stated intention to vacate the rental unit within a week of the hearing, 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:**
 - \$25,186.00 if the payment is made on or before May 31, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$27,686.00 if the payment is made on or before June 9, 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 9, 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 9, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$17,332.36. 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 \$82.19 per day for the use of the unit starting March 28, 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 9, 2023, the Tenants will start to owe interest. This will be simple interest calculated from June 10, 2023 at 6.00% annually on the balance outstanding.

8. If the unit is not vacated on or before June 9, 2023, then starting June 10, 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 10, 2023.

May 29, 2023

Date Issued

Margo den Haan

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 10, 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 May 31, 2023

Rent Owing To May 31, 2023	\$25,000.00
Application Filing Fee	\$186.00
Total the Tenants must pay to continue the tenancy	\$25,186.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before June 9, 2023

Rent Owing To June 30, 2023	\$27,500.00
Application Filing Fee	\$186.00
Total the Tenants must pay to continue the tenancy	\$27,686.00

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

Rent Owing To Hearing Date	\$19,719.13
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	- \$72.77
Total amount owing to the Landlord	\$17,332.36
Plus daily compensation owing for each day of occupation starting March 28, 2023	\$82.19 (per day)