



Order under Section 69 Residential Tenancies Act, 2006

Citation: Trofimov v Herlihey, 2023 ONLTB 39879

Date: 2023-05-25

File Number: LTB-L-061608-22

In the matter of: Upper Unit, 11 Rosemary Lindsay
ON K9V4T1

Between: Peter Trofimov Landlord

And

Jeffrey Herlihey and Tara Generaux Tenants

Peter Trofimov (the 'Landlord') applied for an order to terminate the tenancy and evict Jeffrey Herlihey and Tara Generaux (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on April 26, 2023. The Landlord and the Tenant, Tara Generaux attended the hearing.

Determinations:

1. The parties came before me and requested to resolve the application with the following consent.
2. 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.
3. As of the hearing date, the Tenants were still in possession of the rental unit.
4. The lawful rent is \$1,696.37. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$55.77. This amount is calculated as follows: \$1,696.37 x 12, divided by 365 days.
6. The Tenants have paid \$11,265.00 to the Landlord since the application was filed.
7. The rent arrears owing to April 30, 2023 are \$1,240.48.

8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$1,650.00 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.
10. Interest on the rent deposit, in the amount of \$116.20 is owing to the Tenants for the period from August 1, 2018 to April 26, 2023.
11. The parties consented to a standard order with a delayed eviction to June 2, 2023 to give the Tenants additional time to pay the outstanding arrears. In giving consideration to the Tenants' circumstances, a delayed eviction would be appropriate. However, given the date this order is being issued, I find that a standard 11-day voidable order is not unfair.

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:**
 - \$3,122.85 if the payment is made on or before May 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$4,819.22 if the payment is made on or before June 5, 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 5, 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 5, 2023**
5. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the arrears of rent, compensation and the cost of filing the application the Landlord is entitled to by \$586.07. See Schedule 1 for the calculation of the amount owing. However, the Landlord is authorized to deduct from the amount owing to the Tenants \$55.77 per day for compensation for the use of the unit starting April 27, 2023 until the date the Tenants move out of the unit.
6. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.

7. If the unit is not vacated on or before June 5, 2023, then starting June 6, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. 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 6, 2023.

May 25, 2023

Date Issued

Natalie James

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 6, 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 Tenant 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	\$14,201.85
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$11,265.00
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	\$3,122.85

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before June 5, 2023

Rent Owing To June 30, 2023	\$15,898.22
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$11,265.00
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	\$4,819.22

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

Rent Owing To Hearing Date	\$12,259.13
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$11,265.00
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	- \$1,650.00
Less the amount of the interest on the last month's rent deposit	- \$116.20

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	\$(586.07)
Plus daily compensation owing for each day of occupation starting April 27, 2023	\$55.77 (per day)