



Order under Section 69 Residential Tenancies Act, 2006

Citation: Ronakbhai Desai v Heather Todd, Robert Palmer, 2023 ONLTB 37752

Date: 2023-05-23

File Number: LTB-L-064624-22

In the matter of: 34 PRIMROSE CRES
BELLEVILLE ON K8N0J7

Between: Ronakbhai Desai Landlord

And

Heather Todd and Robert Palmer Tenants

Ronakbhai Desai (the 'Landlord') applied for an order to terminate the tenancy and evict Heather Todd and Robert Palmer (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on May 8, 2023.

Only the Landlord and his legal representative Lorrie McCullough (LM) attended the hearing.

As of 2:37 pm, 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.

Determinations:

Preliminary Issue:

1. The Tenants were not present at the hearing. LM submitted as evidence an email to the first named Tenant dated March 9, 2023 regarding the tenancy issues and a copy of the notice of hearing. LM also submitted a read receipt confirming the Tenant read the email 9 minutes after it was sent by LM.
2. The Landlord requested to proceed with the hearing. There is nothing in the Board's record indicating that the Tenants contacted the Board to request an adjournment or any accommodations. Parties to LTB proceedings are required to act with reasonable diligence in attending scheduled hearings, and in seeking legal advice and accommodation as may be required. This includes, for example, communicating with the LTB in advance of a hearing where the Tenant will not be able to attend for any reason. Accordingly, the hearing proceeded in the Tenants' absence.
3. The Landlord's disclosure was served upon the first named Tenant by email on May 1, 2023 and includes: various communications, audio recording, photos, notice of hearing

and various documents. I note, the Tenant responded to the email on May 1, 2023 and acknowledged the May 8, 2023 hearing.

4. Although this order does not specifically address each piece of evidence individually or reference all of the testimony, I have considered all of the evidence and oral testimony when making my determinations.

The L1 Application

5. The Landlord 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.
6. As of the hearing date, the Tenants were still in possession of the rental unit.
7. The lawful rent is \$2,800.00. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$92.05. This amount is calculated as follows: \$2,800.00 x 12, divided by 365 days.
9. The Tenants have not made any payments since the application was filed.
10. The rent arrears owing to May 31, 2023 are \$20,800.00.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$2,800.00 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.
13. Interest on the rent deposit, in the amount of \$47.95 is owing to the Tenants for the period from September 1, 2022 to May 8, 2023.

Section 83 Considerations

14. 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 Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
15. LM said that both she and the Landlord offered payment plan options to the Tenants several times and the Tenants did not respond.
16. The Landlord is not aware of any children residing in the rental unit, nor aware of any medical circumstances or other reasons to delay or deny the request to terminate the tenancy.

17. The Tenants did not attend the hearing to testify or defend their position, despite knowledge of the date, time and details for the hearing.

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:**
 - \$20,986.00 if the payment is made on or before May 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$23,786.00 if the payment is made on or before June 3, 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 3, 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 3, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$16,074.45. 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 Tenant. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$92.05 per day for the use of the unit starting May 9, 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 3, 2023, the Tenants will start to owe interest. This will be simple interest calculated from June 4, 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 3, 2023, then starting June 4, 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 4, 2023.

May 23, 2023
Date Issued

Dana Wren
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 4, 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	\$20,800.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	\$20,986.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before June 3, 2023

Rent Owing To June 30, 2023	\$23,600.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	\$23,786.00

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

Rent Owing To Hearing Date	\$18,736.40
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	- \$2,800.00
Less the amount of the interest on the last month's rent deposit	- \$47.95
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	\$16,074.45
Plus daily compensation owing for each day of occupation starting May 9, 2023	\$92.05 (per day)