



Order under Section 69 Residential Tenancies Act, 2006

Citation: 530645 Ontario Limited v David Millier, Guy Hamil, 2023 ONLTB 37824

Date: 2023-05-19

File Number: LTB-L-063852-22

In the matter of: 310, 755 ROGER ST
SARNIA ON N7S2S8

Between: 530645 Ontario Limited Landlord

And

David Millier and Guy Hamil Tenant

530645 Ontario Limited (the 'Landlord') applied for an order to terminate the tenancy and evict David Millier and Guy Hamil (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

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

Only Donna Smithson for the Landlord and the Landlord's legal representative Bryan Rubin attended the hearing.

As of 1:50 pm, the Tenant was 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:

1. The Landlord believed the Tenant was aware of the hearing as disclosure was provided to them on May 1, 2023 in addition to the LTB's mailed/emailed notice.
2. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant 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 Tenant was still in possession of the rental unit.
4. The lawful rent is \$1,239.30. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$40.74. This amount is calculated as follows: \$1,239.30 x 12, divided by 365 days.
6. The Tenant has not made any payments since the application was filed.
7. The rent arrears owing to May 31, 2023 are \$11,545.80.

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 \$1,215.00 from the Tenant 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 \$27.81 is owing to the Tenant for the period from December 1, 2020 to May 8, 2023.
11. 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. I have considered the following.
12. The Landlord said there are 2 minor children living in the rental unit, the tenancy began around December 1, 2020. The Landlord has no knowledge of any medical or financial circumstances to be considered as reason to delay or deny the request to terminate the tenancy.
13. The Landlord said the Tenant was offered a payment plan but they did not respond. The Landlord also said the impact of the arrears is significant as they Landlord relies on the rental income to manage the operations of the business and rental properties. The Tenant has not made a good faith payment to the Landlord.
14. The Tenant did not attend the hearing to testify or defend their position.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$11,731.80 if the payment is made on or before May 30, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after May 30, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before May 30, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$9,575.61. 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 Tenant shall also pay the Landlord compensation of \$40.74 per day for the use of the unit starting May 9, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before May 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 31, 2023 at 6.00% annually on the balance outstanding.
8. The Landlord or the Tenant 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 May 30, 2023, then starting May 31, 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 May 31, 2023.

May 19, 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 November 30, 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 30, 2023

Rent Owing To May 31, 2023	\$11,545.80
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	\$11,731.80

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

Rent Owing To Hearing Date	\$10,632.42
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	- \$1,215.00
Less the amount of the interest on the last month's rent deposit	- \$27.81
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	\$9,575.61
Plus daily compensation owing for each day of occupation starting May 9, 2023	\$40.74 (per day)