



Order under Section 69 Residential Tenancies Act, 2006

Citation: Millband aka Fraser Milliband v Delong, 2023 ONLTB 36164

Date: 2023-05-17

File Number: LTB-L-025425-22

In the matter of: 1578 WESTMINSTER AVE WINDSOR
ON N8T1W9

Between: Fraser Millband aka Fraser Milliband Landlord

And

Chyann Delong aka Cyanne Delong, Jon Delong Tenant Freker and Sarah

Fraser Millband aka Fraser Milliband (the 'Landlord') applied for an order to terminate the tenancy and evict Chyann Delong aka Cyanne Delong, Jon Freker and Sarah Delong (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes; and, an order to terminate the tenancy because the Tenant has persistently paid rent late.

This application was heard by videoconference on April 4, 2023.

The Landlord, the Landlord T. Scheib, and the Tenant Sarah Delong attended the hearing. The Tenant Sarah Delong acknowledged having the authority to speak on behalf of the other tenants.

Determinations:

L1 Application

1. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,600.00. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$52.60. This amount is calculated as follows: \$1,600.00 x 12, divided by 365 days.
5. The rent arrears owing to April 30, 2023 are \$11,236.00. The Tenant does not dispute the amount owed.
6. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
7. The Landlord collected a rent deposit of \$1,600.00 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.
8. Interest on the rent deposit, in the amount of \$46.27 is owing to the Tenant for the period from August 1, 2020 to April 4, 2023.
9. Section 83 requires that I consider all the circumstances, including the Tenant's and the Landlord's situations to determine if it would be appropriate to grant section 83 relief from eviction.
10. The Landlord seeks an eviction order as soon as possible, noting the arrears are substantial. The Landlord indicated he has been impacted by higher expenses/interest charges and states he has reached to the Tenants for a repayment plan, without success.
11. The Tenant indicated she has lived at the rental unit for 3 years, alongside her boyfriend, daughter and grandchild. She indicated her employment was impacted by the pandemic. She is agreeable with the tenancy ending but seeks until June 2023 so that her grandson can finish the school year.
12. I have considered all of the disclosed circumstances in accordance with subsection 83 of the *Residential Tenancies Act, 2006* (RTA), including the parties' personal circumstances, the Tenants' challenges in finding alternative accommodations, and whether the Landlord attempted to negotiate a repayment agreement with the Tenant, and find that it would not be unfair to postpone eviction to June 10, 2023.

L2 Application

13. The Landlord also served the Tenant with a Form N8 for persistently late payments. In this case, the Tenant only made partial payments since May 2021, with only the month of April 2021 paid late. I do not find that the Tenant has persistently failed to pay the rent on the date it was due, as the Tenant has simply not paid rent in full for the relevant months. In situations where the Tenant has not paid the rent – as opposed to merely being late - the Landlord must seek relief under the Landlord's L1 Application. The Landlord's L2 Application is accordingly dismissed.

It is ordered that:

L1 Application

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:**
 - \$13,020.00 if the payment is made on or before May 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$14,622.00 if the payment is made on or before June 10, 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 June 10, 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 June 10, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$8,386.13. 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 \$52.60 per day for the use of the unit starting April 5, 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 June 10, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 11, 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 June 10, 2023, then starting June 11, 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 11, 2023. L2 Application
11. The Landlord's L2 Application is dismissed.

May 17, 2023

Date Issued

Peter Nicholson

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 11, 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	\$22,186.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$9,350.00
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	\$13,020.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before June 10, 2023

Rent Owing To June 30, 2023	\$23,786.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$9,350.00
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	\$14,622.00

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

Rent Owing To Hearing Date	\$19,196.40
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$9,350.00
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	- \$1,600.00
Less the amount of the interest on the last month's rent deposit	- \$46.27

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	\$8,386.13
Plus daily compensation owing for each day of occupation starting April 5, 2023	\$52.60 (per day)