



Order under Section 78(6) Residential Tenancies Act, 2006

Citation: Khanna v McMullen, 2023 ONLTB 36299

Date: 2023-05-16

File Number: LTB-L-029670-23

In the matter of:

MAIN FLOOR, 2nd FLOOR AND BASEMENT
5042 SAINT CLAIR AVE
NIAGARA FALLS, ON L2E3T7

Between:

NITIKA KHANNA, RAJAN KHANNA

Landlords

AND

AMANDA GRAHAM, JOHN MCMULLEN

Tenants

On April 12, 2023, Nitika Khanna and Rajan Khanna (the 'Landlords') applied for an order to terminate the tenancy and evict Amanda Graham and John McMullen (the 'Tenants') and for an order to have the Tenants pay the rent they owe because the Tenants did not meet a condition specified in the order issued by the LTB on February 15, 2023 with respect to application LTB-L035737-22.

This application was decided without a hearing being held.

Determinations:

1. The order provides that the Landlords can apply to the LTB under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenants to terminate the tenancy and evict the Tenants if the Tenants do not meet certain condition(s) in the order. This application was filed within 30 days of the breach.
2. I find that the Tenants have not met the following condition specified in the order: **The Tenants failed to pay \$500.00 towards the outstanding arrears in full on or before March 15, 2023. The Tenants also failed to pay the lawful rent for April 2023 in full on or before April 1, 2023.**
3. The previous application includes a request for an order for the payment of arrears of rent and the order requires the Tenants to make payments by specific due dates. Accordingly, in addition to eviction, the Landlords are entitled to request an order for the payment of arrears owing.

4. The Tenants were required to pay \$23,886.00 for rent arrears and the application filing fee in the previous order. The amount that is still owing from that order is \$23,386.00 and that amount is included in this order. This order replaces order LTB-L-035737-22.
5. Since the date of the previous order, the Tenants have failed to pay the full rent that became owing for the period from April 1, 2023 to April 30, 2023.
6. The Landlords collected a rent deposit of \$2,400.00 from the Tenants and this deposit is still being held by the Landlords.
7. Interest on the rent deposit is owing to the Tenants for the period from September 30, 2021 to May 16, 2023.
8. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenants are required to pay.
9. The Landlords are entitled to daily compensation from the day after this order is issued to the date the Tenants move out of the unit at a daily rate of \$78.90. This amount is calculated as follows: \$2,400.00 x 12, divided by 365 days.

It is ordered that:

1. Order LTB-L-035737-22 is cancelled.
2. The tenancy between the Landlords and the Tenants is terminated. The Tenants must move out of the rental unit on or before May 27, 2023.
3. If the unit is not vacated on or before May 27, 2023, then starting May 28, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after May 28, 2023.
5. The Tenants shall pay to the Landlords \$24,597.24* (**less any payments made by the Tenants after this application was filed on April 12, 2023**). This amount represents the rent owing up to May 16, 2023 and the cost of filing the previous application, less the rent deposit and interest the Landlords owe on the rent deposit.
6. The Tenants shall also pay to the Landlords \$78.90 per day for compensation for the use of the unit starting May 17, 2023 to the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlords the full amount owing on or before May 27, 2023, the Tenants will start to owe interest. This will be a simple interest calculated from May 28, 2023 at 6.00% annually on the balance outstanding.

May 16, 2023

Date Issued

Kimberly Parish

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor, Toronto
ON M7A 2G6

The Tenants have until May 26, 2023 to file a motion with the LTB to set aside the order under s. 78(9) of the Act. If the Tenants file the motion by May 26, 2023 the order will be stayed and the LTB will schedule a hearing.

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 28, 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.

* Refer to the attached Summary of Calculations.

Summary of Calculations

Amount the Tenants must pay the Landlords:

Reason for amount owing	Period	Amount
Amount owing from previous order	Up to February 28, 2023	\$23,386.00
New Arrears	March 1, 2023 to May 16, 2023	\$3,662.40
Less the rent deposit:		-\$2,400.00
Less the interest owing on the rent deposit:	September 30, 2021 to May 16, 2023	-\$51.16
Plus daily compensation owing for each day of occupation starting May 17, 2023		\$78.90 (per day)
Total the Tenants must pay the Landlords:		\$24,597.24 +\$78.90 per day starting May 17, 2023

2023 ONLTB 36299 (CanLI)