



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Brendan Weaver v Darryl John Welby, 2023 ONLTB 35801

Date: 2023-05-11

File Number: LTB-L-062927-22

In the matter of: 892 BURWELL ST
FORT ERIE ON L2A0E3

Between: Brendan Weaver Landlord

And

Darryl John Welby and Lynette Christine Beach Tenants

Brendan Weaver (the 'Landlord') applied for an order to terminate the tenancy and evict Darryl John Welby and Lynette Christine Beach (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on April 27, 2023.

The Landlord's legal representative, Judith Callender and the Tenants attended the hearing.

The parties before the LTB consented to the following order:

Determinations:

1. 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.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$3,500.00. It is due on the 18th day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$115.07. This amount is calculated as follows: \$3,500.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.

6. The rent arrears owing to May 17, 2023 are \$35,000.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$2,500.00 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.
9. Interest on the rent deposit, in the amount of \$52.43 is owing to the Tenants for the period from December 18, 2021 to April 27, 2023.
10. 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 Tenants, and given the parties' consent, I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

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:
 - \$35,186.00 if the payment is made on or before May 15, 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 May 15, 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 May 15, 2023
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$30,284.27. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$115.07 per day for the use of the unit starting April 28, 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 May 15, 2023, the Tenants will start to owe interest. This will be simple interest calculated from May 16, 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. This order only permits the Landlord to collect up to \$35,000.00 if the tenancy is terminated,

being the LTB's monetary jurisdiction. If the tenancy is terminated, the Landlord's right to any amount in excess of \$35,000.00 is extinguished.

9. If the unit is not vacated on or before May 15, 2023, then starting May 16, 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 23, 2023.

May 11, 2023

Date Issued

Mark Melchers

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 23, 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before May 17, 2023

Rent Owing To May 17, 2023	\$35,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$35,186.00

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

Rent Owing To Hearing Date	\$32,650.70
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$2,500.00
Less the amount of the interest on the last month's rent deposit	- \$52.43
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total amount owing to the Landlord	\$30,284.27
Plus daily compensation owing for each day of occupation starting April 28, 2023	\$115.07 (per day)