



Order under Section 69 Residential Tenancies Act, 2006

Citation: Blaine Miller v Lisa Brunelle, 2023 ONLTB 36346

Date: 2023-05-10

File Number: LTB-L-006366-23

In the matter of: 34 Close Avenue
Cambridge Ontario N1R2R6

Between: Blaine Miller Landlord

And

Cameron Gilmour and Lisa Brunelle Tenants

Blaine Miller (the 'Landlord') applied for an order to terminate the tenancy and evict Cameron Gilmour and Lisa Brunelle (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

This application was heard by videoconference on April 11, 2023. The Landlord's legal representative, R. Blackwell, and the Tenant, L. Brunelle (LB), attended the hearing. LB stated she was appearing on behalf of Cameron Gilmour.

Preliminary Issues:

Unenforceable Term

1. On April 4, 2023, the parties filed a document with the Board called "Agreement for Repayment of Arrears" so that an order could be issued on the terms.
2. The agreement reads as follows:

Terms as agreed upon March 15, 2023 full rent arrears balance \$6824.00 the Landlord is forgiving \$500.00 of the arrears leaving the balance of \$6324.00 to be as follows.

March 24, 2023: \$1500
April 7, 2023: \$2000
April 21, 2023: 1971
May 20, 2023: \$853

The Tenants will cooperate to allow access for repairs to be completed on the back step and for pest control to come and care for the raccoon in the attic.

Furthermore, the Tenants agrees to give notice in advance should there be any issues in the future with payment being paid on time.

All parties agree that the signed new lease effective June 1, 2023 for the term of 1 year is only valid in the event the above terms are met. Should the above terms not be met exactly as stated then the Tenants agrees to sign an N11 to mutually agree to vacate the unit within 60 days of violation of this agreement.

3. Term 4 is unenforceable. As a general principle, an agreement to enter an agreement in the future is unenforceable. Furthermore, term 4 is unenforceable as it stands in contradiction of the *Residential Tenancies Act, 2006* (the 'Act'). The remedy for a breach of an order or mediated settlement is for the Landlord to apply to the Board for an order terminating a tenancy or evicting the Tenants pursuant to section 78 of the Act. Term 4 circumvents this process and terminates the tenancy without an application from the Landlord.
4. At the hearing, the parties were advised of the unenforceable term and the hearing proceeded on a contested basis.

Post-hearing submissions

5. On April 11 and April 13, 2023, the Board received an unsolicited post-hearing document from the Landlord and the Tenants. The unsolicited documents are the L1/L9 update sheet and the Tenants' screenshots of payments made disputing the rent paid. As stated, this is an unsolicited post-hearing submission and, therefore, was not considered in determining this application. I did not see a need to reconvene the hearing and the document has been placed in the Board's file.

Determinations:

6. 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.
7. As of the hearing date, the Tenants were still in possession of the rental unit.
8. The lawful rent is \$1,526.00. It is due on the 1st day of each month.
9. Based on the Monthly rent, the daily rent/compensation is \$50.17. This amount is calculated as follows: \$1,526.00 x 12, divided by 365 days.

10. At the hearing, the Landlord submitted that the rent arrears owing to April 30, 2023 are \$4,324.00. While the parties disputed the amount paid after the application was filed, the Tenants did not contest that the arrears were \$4,324.00.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. There is no last month's rent deposit.
13. 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 find that it would not be unfair to postpone the eviction until May 31, 2023 pursuant to subsection 83(1)(b) of the Act.
14. LB presented a repayment plan based on \$4,510.00, which includes the arrears of rent and the application filing fee. The plan is as follows:

April 21, 2023 \$1,971.00
May 5, 2023 \$1,200.00
May 9, 2023 \$1,153.00 June
1, 2023 \$186.00
15. LB also testified that she adhered to the proposed payment plan filed on April 4, 2023 thus far.
16. The Landlord objected to entering the repayment plan outlined above as there have been thousands of text messages exchanged regarding the nonpayment of rent. Further, the Landlord has attempted to assist the Tenants in finding a new home.
17. On a balance of probabilities, I find it would not be unfair to postpone termination of the tenancy to May 31, 2023. LB testified to the Tenants' expenses and income, and it appears she can adhere to her proposed payment plan. The Tenants have also demonstrated she is able to adhere to a payment plan as they made the first payments. The time frame for repayment is also reasonable. I find it appropriate to provide the Tenants with an opportunity to pay the arrears in accordance with their proposed payment plan and May's rent. However, I find it appropriate to require the Tenants to pay the application filing fee on or before May 31, 2023 to prevent further arrears of rent from accruing.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants voids this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$6,036.00 if the payment is made on or before May 31, 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 has paid the full amount owing as ordered plus any additional rent that became due after May 31, 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 does not pay the amount required to void this order the Tenants must move out of the rental unit on or before May 31, 2023**
5. If the Tenants does not void the order, the Tenants shall pay to the Landlord **\$3,535.87**. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$50.17 per day for the use of the unit starting April 12, 2023 until the date the Tenants moves out of the unit.
7. If the Tenants does not pay the Landlord the full amount owing on or before May 31, 2023, the Tenants will start to owe interest. This will be simple interest calculated from June 1, 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 May 31, 2023, then starting June 1, 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 1, 2023.

May 10, 2023

Date Issued

Camille Tancioco

Member, Landlord and Tenants 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 1, 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.

*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

**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 30, 2023

Rent Owing To May 31, 2023	\$5,850.00
Application Filing Fee	\$186.00
NSF Charges	\$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	\$6,036.00

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

Rent Owing To Hearing Date	\$3,349.87
Application Filing Fee	\$186.00
NSF Charges	\$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	- \$
Less the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord	\$3,535.87
Plus daily compensation owing for each day of occupation starting April 12, 2023	\$50.17 (per day)

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