



Order under Section 69 Residential Tenancies Act, 2006

Citation: DRAKE PROPERTY MANAGEMENT v Kristen Barrett, 2023 ONLTB 35573

Date: 2023-05-05

File Number: LTB-L-054809-22

In the matter of: 307, 75 CARLING ST
HAMILTON ON L8S1N1

Between: DRAKE PROPERTY MANAGEMENT Landlord

And

Brandon Levesque and Kristen Barrett Tenants

DRAKE PROPERTY MANAGEMENT (the 'Landlord') applied for an order to terminate the tenancy and evict Brandon Levesque and Kristen Barrett (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on April 11, 2023. The Landlord's legal representative, M. Ciobotaru, and the Tenant, K. Barrett (KB), attended the hearing. KB stated she was attending the hearing on behalf of Brandon Levesque.

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 was still in possession of the rental unit.
3. The lawful rent is \$1,815.27. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$59.68. This amount is calculated as follows: \$1,815.27 x 12, divided by 365 days.
5. The Tenants has paid \$550.00 to the Landlord since the application was filed.

6. The rent arrears owing to April 30, 2023 are \$17,337.08.
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 \$1,750.00 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 \$36.82 is owing to the Tenants for the period from December 1, 2020 to April 11, 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 find that it would not be unfair to postpone the eviction until May 31, 2023 pursuant to subsection 83(1)(b) of the Act.
11. Pursuant to section 83(6), I am required to consider whether the Landlord made attempts to negotiate a payment agreement with the Tenants. The Landlord submitted that letters were sent to the Tenant regarding a repayment plan. However, the issue has been insufficient funds to pay rent or arrears. I am satisfied that the Landlord attempted to negotiate a payment agreement with the Tenants.
12. Regarding section 83(2), the Tenant disclosed issues with her partner's employment. He lost his job, his aunt and mother had health issues, and the Tenant was on maternity leave. However, she states that in December 2022, she began working again. In addition, her partner is scheduled to go back to work the week following the hearing. She states that she is able to pay an additional \$600.00 a month towards arrears. She states she has a 1.5-year-old. The Landlord objected to the Tenant's proposed payment plan.
13. In consideration of the foregoing, I find it would not be unfair to postpone termination of the tenancy to May 31, 2023. It would be unfair to impose the Tenant's proposed payment plan on the Landlord as it would take approximately 30 months to pay off the outstanding arrears. Further, while the Tenant states they will be able to pay more as her partner will be returning to work, this appears to be speculative only. The postponed termination date will provide the
Tenants with some time to organize their move or obtain a loan for funds to void this order.

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:**

- \$19,338.35 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 \$14,577.47. 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 \$59.68 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 16, 2023, the Tenants will start to owe interest. This will be simple interest calculated from May 17, 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 5, 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 31, 2023

Rent Owing To May 31, 2023	\$19,702.35
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$550.00
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	\$19,338.35

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

Rent Owing To Hearing Date	\$16,728.29
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$550.00
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	- \$1,750.00
Less the amount of the interest on the last month's rent deposit	- \$36.82
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	\$14,577.47
Plus daily compensation owing for each day of occupation starting April 12, 2023	\$59.68 (per day)

2023 ONLTB 35573 (CanLII)