



Order under Section 69  
Residential Tenancies Act, 2006

Citation: Mendes v Musclow, 2023 ONLTB 33164

Date: 2023-04-27 File Number: LTB-  
L-034047-22-RV

In the matter of: 11 ELMWOOD DR  
TRENTON ON K8V1Z8

Between: Antoinetta Geraldès and Jenifer Mendes Landlords

And

Lori Musclow and Matthew Stoner Tenants

REVIEW ORDER

Antoinetta Geraldès and Jenifer Mendes (the 'Landlords') applied for an order to terminate the tenancy and evict Lori Musclow and Matthew Stoner (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was resolved by order LTB-L-034047-22 issued on March 2, 2023.

On March 13, 2023, Tenants requested a review of the order, and that the order be stayed until the request to review is resolved.

On March 14, 2023, interim order LTB-L-034047-22-RV-IN was issued, staying the order issued on March 2, 2023.

The request was heard by videoconference on March 29, 2023.

The Landlord, Antoinetta Geraldès and the Tenants attended the hearing.

Determinations:

Request to Review

1. In the Request to review, the Tenants allege that they were not reasonably able to participate in the proceedings as they did not receive the notice of hearing until after the hearing took place.

2. The Tenants testified that their grandchildren routinely get the mail from the mailbox. They discovered that the children had been placing the collected mail in a closet on a shelf. The Tenants discovered the notice of hearing in the closet after the hearing had taken place. The Tenants have since not allowed the children to collect the mail.
3. The Landlord submits that she emailed a copy of the notice of hearing to the Tenants but could not produce a copy of the email at the hearing.
4. The request to review is granted. I am satisfied that the Tenants were not reasonably able to participate in the hearing as they were not aware that a hearing was scheduled because of the children placing the mail in a closet. As a result, order LTB-L-034047-22 issued on March 2, 2023 is cancelled and a new hearing was held to consider the merits of the original application.

Merits of the original application

5. 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.
6. As of the hearing date, the Tenant was still in possession of the rental unit.
7. The lawful rent is \$2,450.00. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$80.55. This amount is calculated as follows: \$2,450.00 x 12, divided by 365 days.
9. The Tenant has not made any payments since the application was filed.
10. The rent arrears owing to March 31, 2023 are \$28,600.00.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$2,450.00 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.
13. Interest on the rent deposit, in the amount of \$60.91 is owing to the Tenant for the period from April 1, 2022 to March 29, 2023.

Relief from eviction

14. At the hearing the parties agreed to a termination date of April 30, 2023. Given the timing of this order, a standard order will be issued.
15. 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 Tenant and 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 request to review order LTB-L-034047-22 issued on March 2, 2023 is granted.
2. Order LTB-L-034047-22 issued on March 2, 2023 is cancelled and replaced by the following:
3. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
4. The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:
  1. \$31,236.00 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.
- OR
2. \$33,686.00 if the payment is made on or before May 8, 2023. See Schedule 1 for the calculation of the amount owing.
5. 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 May 8, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
6. 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 May 8, 2023
7. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$26,161.04. 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.
8. The Tenant shall also pay the Landlord compensation of \$80.55 per day for the use of the unit starting March 30, 2023 until the date the Tenant moves out of the unit.
9. If the Tenant does not pay the Landlord the full amount owing on or before May 8, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 9, 2023 at 6.00% annually on the balance outstanding.
10. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
11. If the unit is not vacated on or before May 8, 2023, then starting May 9, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
12. 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 9, 2023.

April 27, 2023

Date Issued

15 Grosvenor Street, Ground Floor  
Toronto ON M7A 2G6

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Emily Robb

Member, Landlord and Tenant Board

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 9, 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 April 30, 2023

Rent Owing To April 30, 2023	\$31,050.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	\$31,236.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 8, 2023

Rent Owing To May 31, 2023	\$33,500.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	\$33,686.00

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

Rent Owing To Hearing Date	\$28,485.95
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00

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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	- \$2,450.00
Less the amount of the interest on the last month's rent deposit	- \$60.91
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	\$26,161.04
Plus daily compensation owing for each day of occupation starting March 30, 2023	\$80.55 (per day)