



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

Citation: Isabella Lo v Melissa Willigan, 2023 ONLTB 33464

Date: 2023-04-26

File Number: LTB-L-054896-22

In the matter of: 1387 Freeport Drive
Mississauga, ON L5C 1S5

Between: Isabella Lo Landlord

And

Darren Viennieu Tenants
Marissa Borges
Melissa Willigan

Isabella Lo (the 'Landlord') applied for an order to terminate the tenancy and evict Darren Viennieu, Marissa Borges and Melissa Willigan (the 'Tenants') because the Tenants did not pay the rent that the Tenant owes.

This application was heard by videoconference on April 11, 2023.

The Landlord's agent Daniel Lo and the Tenants Darren Viennieu and Melissa Willigan attended the hearing. The Tenants met with Tenant Duty Counsel prior to the hearing.

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 \$2,600.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$85.48. This amount is calculated as follows: \$2,600.00 x 12, divided by 365 days.
5. The Tenants have paid \$2,600.00 to the Landlord since the application was filed.

6. The rent arrears owing to April 30, 2023 are \$22,512.88.
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 \$2,600.00 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.
9. Interest on the rent deposit, in the amount of \$35.44 is owing to the Tenant for the period from September 25, 2022 to April 11, 2023.

Section 83 Considerations

10. The Landlord's Legal Representative submitted that since the tenancy started in March of 2022, the Tenants only paid \$600.00 in rent in July of 2022, and another payment of \$2,600.00 made on October 6, 2022.
11. The Landlord's Legal Representative submitted that on multiple occasions the Landlord tried to work with the Tenants on a payment plan without any success.
12. The Tenants testified that they have fallen behind on their rent as a result of illness in the family. The Tenants testified that they are now employed and offered a payment plan whereby the Tenants would pay the regular, lawful rent on time on the 1st of each month, plus an additional \$200.00 a month to pay off the arrears. The Tenants testified that their children go to school in the area and being evicted would be difficult on their family.
13. Based on the evidence I have heard from both parties I am not satisfied on a balance of probabilities that the Tenant's repayment plan is reasonable. The Tenants have not been able to make any rent payments since October and it appears as though their income cannot support the rent.
14. The Tenants will be evicted however, eviction will be postponed until the end of June to allow the Tenants to either void the order or to vacate the unit.
15. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until June 30, 2023 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

16. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
17. **The Tenants may void this order and continue the tenancy by paying to the Landlord:**

1. \$22,698.88 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

2. \$25,298.88 if the payment is made on or before May 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

3. \$27,898.88 if the payment is made on or before June 30, 2023. See Schedule 1 for the calculation of the amount owing.

18. 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 June 30, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.

19. 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 June 30, 2023.

20. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$18,489.20. 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.

21. The Tenants shall also pay the Landlord compensation of \$85.48 per day for the use of the unit starting April 12, 2023 until the date the Tenants move out of the unit.

22. If the Tenants do not pay the Landlord the full amount owing on or before May 7, 2023, the Tenants will start to owe interest. This will be simple interest calculated from May 8, 2023 at 6.00% annually on the balance outstanding.

23. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.

24. If the unit is not vacated on or before June 30, 2023, then starting July 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

25. 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 July 1, 2023.

April 26, 2023

Date Issued

Jagger Benham

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 January 1, 2024 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 April 30, 2023

Rent Owing To April 30, 2023	\$25,112.88
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$2,600.00
Total the Tenants must pay to continue the tenancy	\$22,698.88

B. 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	\$27,712.88
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$2,600.00
Total the Tenants must pay to continue the tenancy	\$25,298.88

C. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before June 30, 2023

Rent Owing To June 30, 2023	\$30,312.88
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$2,600.00
Total the Tenants must pay to continue the tenancy	\$27,898.88

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

Rent Owing To Hearing Date	\$23,538.64
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,600.00
Less the amount of the last month's rent deposit	- \$2,600.00
Less the amount of the interest on the last month's rent deposit	- \$35.44

Total amount owing to the Landlord	\$18,489.20
Plus daily compensation owing for each day of occupation starting April 12, 2023	\$85.48 (per day)