



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

Citation: Civita Vitiello v Amanda Lamothe, 2023 ONLTB 32861

Date: 2023-04-26

File Number: LTB-L-056146-22

In the matter of: 739 LORNE ST
SUDBURY ON P3C4R5

Between: Civita Vitiello Landlord

And

Amanda Lamothe Tenants Cory Lamondin

Civita Vitiello (the 'Landlord') applied for an order to terminate the tenancy and evict Amanda Lamothe and Cory Lamondin (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on April 13, 2023.

The Landlord, the Landlord's Legal Representative, Monique Laderoute, and the Tenant, Cory Lamondin, attended the hearing. The Tenant spoke with Duty Counsel prior to the hearing.

Determinations:

Preliminary Issue – Adjournment Request

1. At the outset of the hearing, the Tenant requested an adjournment stating that he had only received the Notice of Hearing a week prior to the hearing date which did not give him sufficient time to reply to the Landlord's allegations or retain legal counsel. The Tenant submitted that he had just retained legal counsel who was not able to attend on such short notice. The Tenants' adjournment request was denied for the reasons below.
2. First, I note that the LTB's records indicate that the Notice of Hearing was mailed out to the rental unit address on March 13, 2023 and deemed given to the Tenants on March 20,

2023. There is noting in the LTB's records to indicate that the Notice of Hearing was returned as undeliverable. The Tenant did not allege issues with their mail. Accordingly, I was not satisfied that the Tenant only received the Notice of Hearing a week prior to the hearing. Even if I accept that the Tenants received the Notice of Hearing a week prior to the hearing date, I find that this would have been sufficient time for the Tenants to disclose their evidence and reply to the Landlords.

3. I also considered section 183 of the *Residential Tenancies Act, 2006* (the 'Act') which requires the LTB to adopt the most expeditious method of determining issues in a proceeding that affords all parties an adequate opportunity to know the issues and be heard on the matter. According to the Certificate of Service, the N4 notice of termination was deemed served on September 14, 2022. The application was filed September 29, 2022. Seven months have passed to get to a hearing. The delay has afforded the Tenants sufficient time to retain counsel, gather their evidence and disclose it to the Landlord.
4. The Tenants did not satisfy me that they acted diligently to retain legal counsel throughout the 7 months since being given the notice of termination. Nothing from their representative was submitted to support that the Tenants had even retained representation.
5. Finally, I considered the arrears alleged to be substantial and that the Tenants are alleged to have not made any payments since the application was filed. Accordingly, a further adjournment would only serve to delay the proceedings and prejudice the Landlord.

Preliminary Issue – S.82

6. The Tenant also attempted to raise a number of issues with respect to flooding, mold, and moisture issues that were not addressed by the Landlord. The Tenants failed to give advanced written notice of their intention to raise these issues at the hearing in accordance with subsection 82(2) of the Act. The Tenants failed to provide a reasonable explanation for their failure to do so. Accordingly, the Tenants' issues were only considered with respect to granting relief from eviction which is discussed below.

L1 Application

7. 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.
8. As of the hearing date, the Tenant was still in possession of the rental unit.
9. The lawful rent is \$1,300.00. It is due on the 1st day of each month.
10. Based on the Monthly rent, the daily rent/compensation is \$42.74. This amount is calculated as follows: \$1,300.00 x 12, divided by 365 days.
11. The Tenant has not made any payments since the application was filed.

12. The rent arrears owing to April 30, 2023 are \$13,600.00.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. There is no last month's rent deposit.
15. I have considered all of the disclosed circumstances in accordance with subsection 83 of the *Residential Tenancies Act, 2006* (RTA), 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.
16. The Tenants have not made any payments since the application was filed and the arrears are substantial. The Tenants did not propose a viable plan to maintain the tenancy.
17. I have considered the Tenant's testimony with respect to problems with flooding of the basement in May 2022, water coming from the sump pump and mold and based on the submissions made at the hearing, I do not find that are serious and ongoing to justify mandatory relief of eviction. The Tenant did not provide any documentary evidence to substantiate or satisfy me of the serious nature of the Landlord's breach. I also note that the issues alleged to have arisen in May 2022 yet the Tenants had not filed a claim with the LTB as of the hearing date. In my view, had the issues been serious, a reasonable tenant would have at least filed an application with the LTB.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$13,786.00 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$15,086.00 if the payment is made on or before May 7, 2023. See Schedule 1 for the calculation of the amount owing.
3. 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 7, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. **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 7, 2023**

5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$13,041.62. 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 Tenant shall also pay the Landlord compensation of \$42.74 per day for the use of the unit starting April 14, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before May 7, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 8, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before May 7, 2023, then starting May 8, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 8, 2023.

April 26, 2023

Date Issued

Khalid Akram

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 8, 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 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	\$13,600.00
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	\$13,786.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 7, 2023

Rent Owing To May 31, 2023	\$14,900.00
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	\$15,086.00

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

Rent Owing To Hearing Date	\$12,855.62
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 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 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	\$13,041.62
Plus daily compensation owing for each day of occupation starting April 14, 2023	\$42.74 (per day)