



Order under Section 69 Residential Tenancies Act, 2006

Citation: Asad Farooq v Martin Nickolos Kellman, 2023 ONLTB 31909

Date: 2023-04-21

File Number: LTB-L-054229-22

In the matter of: 3073 TURNER CRES
LONDON ON N6M0J8

Between: Asad Farooq Landlords
Rukhsana Asad

And

Katie Weed Tenants
Martin Nickolos Kellman

Asad Farooq and Rukhsana Asad (the 'Landlords') applied for an order to terminate the tenancy and evict Katie Weed and Martin Nickolos Kellman (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

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

Only the Landlords and their Representative, Harpreet Luthra attended the hearing. The Tenants were not present or represented at the hearing although properly served with notice of this hearing by the LTB. The Board mailed the Notice of Hearing to each of the Tenants on March 9, 2023 and the Landlords' Representative, emailed the L1/L9 Update Form to the Tenant on April 4, and twice on April 10, 2023 and none of the mail was returned as undelivered. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlords' evidence.

Determinations:

1. The Landlords 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 \$4,000.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$131.51. This amount is calculated as follows: \$4,000.00 x 12, divided by 365 days.
5. The Tenants have paid \$7,000.00 to the Landlords since the application was filed.
6. The rent arrears owing to April 30, 2023 are \$29,000.00.
7. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlords collected a rent deposit of \$4,000.00 from the Tenants and this deposit is still being held by the Landlords. 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 \$78.08 is owing to the Tenants for the period from July 1, 2022 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 Landlords attempted to negotiate a repayment agreement with the Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenants payment history is poor and the tenancy starting less than one year ago. I do not believe this tenancy can be preserved with a payment plan.

It is ordered that:

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**
 - \$29,186.00 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$33,186.00 if the payment is made on or before May 2, 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 have paid the full amount owing as ordered plus any additional rent that became due after May 2, 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 do not pay the amount required to void this order the Tenants must move out of the rental unit on or before May 2, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$22,554.53. 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 Landlords 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 Landlords compensation of \$131.51 per day for the use of the unit starting April 12, 2023 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlords the full amount owing on or before May 2, 2023, the Tenants will start to owe interest. This will be simple interest calculated from May 3, 2023 at 6.00% annually on the balance outstanding.
8. The Landlords 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 2, 2023, then starting May 3, 2023, the Landlords 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 Landlords on or after May 3, 2023.

2023 ONLTB 31909 (CanLI)

April 21, 2023

Date Issued

 Sandra Macchione
 Member, Landlords 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 November 3, 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 April 30, 2023**

Rent Owing To April 30, 2023	\$36,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$7,000.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlords 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	\$29,186.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before May 2, 2023

Rent Owing To May 31, 2023	\$40,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$7,000.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlords 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	\$33,186.00

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

Rent Owing To Hearing Date	\$33,446.61
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$7,000.00
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	- \$4,000.00
Less the amount of the interest on the last month's rent deposit	- \$78.08
Less the amount the Landlords 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 Landlords	\$22,554.53

Plus daily compensation owing for each day of occupation starting April 12, 2023	\$131.51 (per day)
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