



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

Citation: Roberto v Cleary, 2023 ONLTB 31535

Date: 2023-04-19

File Number: LTB-L-011102-22

In the matter of: 181, 4975 SOUTHAMPTON DR MISSISSAUGA
ON L5M8C5

Between: Giuseppe Roberto
Maria Roberto Landlords

And

Simone Cleary Tenant

Giuseppe Roberto and Maria Roberto (the 'Landlords') applied for an order to terminate the tenancy and evict Simone Cleary (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 31, 2023.

The Landlord, Giuseppe Roberto; the Landlord's legal representative, Elaine Page; and the Tenant attended the hearing.

Determinations:

1. The Landlords served the Tenant with a valid Notice to End Tenancy Early for Nonpayment 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,851.58. It is due on the 25th day of each month.
4. Based on the monthly rent, the daily rent/compensation is \$60.87. This amount is calculated as follows: \$1,851.58 x 12, divided by 365 days.

5. The Tenant has paid \$5,197.42 to the Landlords since the application was filed.
6. The Tenant did not present evidence of any rent payments she made that the Landlords have not accounted for. Therefore, I am satisfied on a balance of probabilities that the rent arrears owing to April 24, 2023 are \$21,267.78, as claimed by the Landlords.
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 \$1,851.58 from the Tenant 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 \$4.44 is owing to the Tenant for the period from February 25, 2023 to March 31, 2023.

Issues raised by the Tenant

10. At the hearing, the Tenant testified that she disputes the application on the basis that there are several outstanding maintenance issues at the rental unit. However, the Tenant was not permitted to proceed with raising these issues under section 82 of the *Residential Tenancies Act, 2006* (the "Act"). The Tenant did not give the Landlords and the LTB a written description of each issue in advance of the hearing. In addition, the Tenant recently filed her own T2/T6 application (file number LTB-T-026703-23) to address these issues. The Tenant's application will be scheduled by the LTB in the normal course and the Tenant will have the opportunity to address her issues at that time.

Section 83 considerations

11. I reviewed the Tenant's maintenance issues to determine if any of them rise to the level of the Landlords being in serious breach of their obligations under the Act to justify mandatory refusal of eviction under subsection 83(3)(a). Specifically, I focused on the Tenant's claim that there is insufficient heat and hot water in the rental unit. Based on the Tenant's evidence, I find that these issues do not satisfy the requirements of subsection 83(3)(a).
12. With respect to the Tenant's claim that there is insufficient heat, she testified that the temperature varies in the rental unit and that there is occasionally insufficient heat, which prompted her to purchase a portable heater. However, the Tenant failed to establish that there was insufficient heat in the unit at the time of the hearing – that the issue is current and ongoing.
13. With respect to the Tenant's claim that there is insufficient hot water, I am not satisfied that the issue is serious as required by subsection 83(3)(a). The parties do not dispute that the city of Mississauga's by-law enforcement is investigating this issue and a work order was issued requiring the Landlords to remedy the issue by April 30, 2023. However, the existence of the work order, in itself, is not determinative of the seriousness of the issue. I

also considered the Tenant's evidence that while the issue has been ongoing since October 2020, she only reported it to Housing Enforcement and the municipality more than two years later in December 2022. I also considered the Tenant's evidence that the Landlords have made and continue to make efforts to address this issue. I further considered the Tenant's evidence that while she sometimes showers outside of the rental unit she also "makes do". Ultimately, the Tenant did not have any concrete and objective evidence to establish that the issue is serious, that it has had a serious impact on her health or that it has deprived her of use of the rental unit.

14. While these issues do not meet the test in subsection 83(3)(a) of the Act for the purpose of this application, that does not prevent the Tenant from pursuing these issues as part of her own application.
15. I have considered all the disclosed circumstances in accordance with subsection 83(2) of the Act, including the impact of COVID-19 on the parties and whether the Landlords 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. The Tenant did not dispute the Landlords' assertion that they have made multiple attempts to negotiate a payment plan with the Tenant to no avail. The Landlord, Giuseppe Roberto, testified that the rent arrears have caused him significant stress and have had a serious impact on his health. The Tenant testified that she is having a house built but she cannot move into it until August. However, given the size of the arrears, the amount of time these proceedings have been ongoing and the parties' evidence about their relative circumstances, I am not satisfied that it would be fair or appropriate to delay eviction any further.

It is ordered that:

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**
 - \$21,453.78 if the payment is made on or before April 24, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$23,305.36 if the payment is made on or before April 30, 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 April 30, 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 April 30, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$18,172.27. 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.
6. The Tenant shall also pay the Landlord compensation of \$60.87 per day for the use of the unit starting April 1, 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 April 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 1, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before April 30, 2023, then starting May 1, 2023, the Landlords 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 Landlords on or after May 1, 2023.

April 19, 2023

Date Issued

Anna Solomon

Vice Chair, 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 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.

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 24, 2023

Rent Owing To April 24, 2023	\$26,465.20
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords since the application was filed	- \$5,197.42
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlords owe 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	\$21,453.78

B. 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 May 24, 2023	\$28,316.78
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords since the application was filed	- \$5,197.42
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlords owe 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	\$23,305.36

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

Rent Owing To Hearing Date	\$25,039.71
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords since the application was filed	- \$5,197.42
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	- \$1,851.58
Less the amount of the interest on the last month's rent deposit	- \$4.44

Less the amount the Landlords owe 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 Landlords	\$18,172.27
Plus daily compensation owing for each day of occupation starting April 1, 2023	\$60.87 (per day)