



Order under Section 69 Residential Tenancies Act, 2006

Citation: 1459 Trafalgar Street Investment Inc. v Alate, 2023 ONLTB 31536

Date: 2023-04-18

File Number: LTB-L-007473-22

In the matter of: 116, 1459 TRAFALGAR ST LONDON
ON N5W1W8

Between: 1459 Trafalgar Street Investment Inc. Landlord

And

Gafar Alate Keanna Alate Tenants

1459 Trafalgar Street Investment Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Gafar Alate and Keanna Alate (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe. (L1 Application)

The Landlord also applied for an order to terminate the tenancy and evict the Tenants because the Tenants have been persistently late in paying their rent. The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date. (L2 Application)

This L1/L2 application was heard by videoconference on March 31, 2023.

The Landlord's legal representative, Bryan Rubin, and the Tenants attended the hearing.

Determinations:

L1 Application

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 \$816.71. It is due on the 1st day of each month.
4. Based on the monthly rent, the daily rent/compensation is \$26.85. This amount is calculated as follows: \$816.71 x 12, divided by 365 days.
5. The Tenants have paid \$8,050.00 to the Landlord since the application was filed.
6. The rent arrears owing to March 31, 2023 are \$7,425.41.
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 \$785.00 from the Tenants 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 \$30.71 is owing to the Tenants for the period from March 1, 2021 to March 31, 2023.

L2 Application

10. On November 25, 2021, the Landlord gave the Tenants an N8 notice of termination.
11. The Tenants persistently failed to pay the rent on the date it was due. The rent is due on the first day of each month. The rent was paid late every month during the six-month period from June 2021 to November 2021, as set out in the N8 notice of termination.
12. Since the N8 notice of termination was served, the Tenants continued to pay the rent late for the months of December 2021 and January 2022 to December 2022.

Section 83 considerations

13. 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 May 31, 2023 pursuant to subsection 83(1)(b) of the Act.
14. The Tenants requested a payment plan, according to which they would pay \$350.00 toward the arrears each month, in addition to their monthly rent. However, based on the Tenants' evidence I am not satisfied that they can afford these payments toward the arrears, let alone the rent. The Tenants testified that their household income is approximately \$4,350.00, including both Tenants' wages. The Tenants testified that their monthly expenses total approximately \$5,150.71, including rent (\$816.71); hydro (\$65.00); cell phones (\$200.00); internet (\$125.00); car payments (\$1,232.00); insurance (\$337.00); cat food (\$20.00); credit car payments (\$800.00); student loans (\$450.00); bank fees (\$25.00); gas (\$480.00) and groceries (\$600.00).
15. Based on the Tenants' evidence about their financial circumstances, I do not find it appropriate to order their proposed payment plan.

16. Instead, I find it appropriate to extend the eviction date until May 31, 2023, to give the Tenants additional time to either pay the arrears or find a new place to live. The Landlord did not present any evidence that extending the eviction date to May 31st will cause the Landlord significant prejudice. Any prejudice the Landlord may experience as result of this extension can be mitigated by the rent deposit, which the Landlord is holding.
17. If the Tenants void the L1 Application by bringing their rent account to a zero balance, they will be required to pay their rent on time for a year, failing which the Landlord can apply to the Board for eviction within 30 days of the breach without notice to them.

It is ordered that:

L1 Application

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$8,428.12 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$9,244.83 if the payment is made on or before May 31, 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 31, 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 31, 2023.**
 5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$6,795.70. 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.
 6. The Tenants shall also pay the Landlord compensation of \$26.85 per day for the use of the unit starting April 1, 2023 until the date the Tenants move out of the unit.

7. If the Tenants do not pay the Landlord the full amount owing on or before April 29, 2023, the Tenants will start to owe interest. This will be simple interest calculated from April 30, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before May 31, 2023, then starting June 1, 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 June 1, 2023.

L2 Application

10. If the Tenants void the L1 portion of the order in accordance with paragraph two above, the tenancy shall continue on the following terms.
11. The Tenants shall pay the Landlord the monthly rent due on or before the first day of the month for the period June 1, 2023 to May 1, 2024.
12. If the Tenants fail to make any of the payments in paragraph 13 above, the Landlord may apply under section 78 of the Act, within 30 days of the breach and without notice to the Tenants, for an order terminating the tenancy and evicting the Tenants.

April 18, 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 December 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 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	\$16,292.12
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$8,050.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$8,428.12

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	\$17,108.83
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$8,050.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$9,244.83

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

Rent Owing To Hearing Date	\$15,475.41
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$8,050.00
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	- \$785.00
Less the amount of the interest on the last month's rent deposit	- \$30.71

Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total amount owing to the Landlord	\$6,795.70
Plus daily compensation owing for each day of occupation starting April 1, 2023	\$26.85 (per day)