



Order under Section 69 Residential Tenancies Act, 2006

Citation: Tao v Cotter, 2023 ONLTB 31316

Date: 2023-04-17

File Number: LTB-L-050811-22

In the matter of: 10, 14 Milford Crescent
North Bay ON P1A1M3

Between: Norman Tao Landlord

And

Lorie-Ann Cotter Tenants Nicholas Cotter

Norman Tao (the 'Landlord') applied for an order to terminate the tenancy and evict Lorie-Ann Cotter and Nicholas Cotter (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on March 28, 2023. The Landlord's agent Micheline Dube and the Tenants attended the hearing.

Determinations:

Adjournment request:

1. At the commencement of the hearing, the Tenants requested that the matter be adjourned. The Tenants testified that they required additional time to file evidence in support of their case. The Tenants agree that they received notice of hearing in early March 2023 and were unable to provide the Board with any explanation as to why they could not obtain the required evidence despite receiving adequate notice of hearing.
2. Based on the submissions of the parties I denied the adjournment request. I find that the Tenants were served with proper notice of hearing and had ample time to prepare and file evidence for the hearing.

Section 82 claims:

3. Although the Tenants requested an adjournment to obtain and file additional evidence, the Tenants did in fact file with the Board photographs to support maintenance concerns in the

rental unit. The Tenants attempted to raise these issues pursuant to section 82 of the Act which states:

- 82** (1) At a hearing of an application by a landlord under section 69 for an order terminating a tenancy and evicting a tenant based on a notice of termination under section 59, the Board shall permit the tenant to raise any issue that could be the subject of an application made by the tenant under this Act if the tenant
- (a) complies with the requirements set out in subsection (2); or
 - (b) provides an explanation satisfactory to the Board explaining why the tenant could not comply with the requirements set out in subsection (2)

(2) The requirements referred to in subsection (1) are the following:

- 1. The tenant shall give advance notice to the landlord of the tenant's intent to raise the issue at the hearing.
- 2. The notice shall be given within the time set out in the Rules.
- 3. The notice shall be given in writing and shall comply with the Rules.

4. In accordance with section 82(2) of the Act, the Board's Rules of Procedure provide as follows:

19.4. Unless the LTB has directed or ordered otherwise, a tenant who intends to raise issues under sections 82(1) or 87(2) of the RTA during a hearing for a landlord's application about rent arrears shall provide the other parties and the LTB with the following at least 7 days before the scheduled CMH or hearing:

- 1. a written description of each issue the tenant intends to raise; and
- 2. a copy of all documents, pictures and other evidence that the tenant intends to rely upon at the hearing.

5. The Tenants failed to comply with the notice / disclosure requirements of Rule 19.4. Although the Tenant's filed photographic evidence to the Board, the Tenants did not disclose this evidence to the Landlord in advance of the hearing, nor did they provide the Landlord with a list of issues to be raised as required by Rule 19.4.

6. Therefore, the Tenants are not entitled to raise section 82 issues and the matter proceeded to hear the Landlord's claim for non-payment of rent only. The Tenants were advised that they could file their own application pursuant to the Act.

Non-payment of rent:

7. 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.
8. As of the hearing date, the Tenants were still in possession of the rental unit.
9. The lawful rent is \$1,230.00. It is due on the 1st day of each month.
10. Based on the Monthly rent, the daily rent/compensation is \$40.44. This amount is calculated as follows: \$1,230.00 x 12, divided by 365 days.
11. The Tenants have not made any payments since the application was filed.
12. The rent arrears owing to March 31, 2023 are \$9,690.00.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. The Landlord collected a rent deposit of \$1,200.00 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.
15. Interest on the rent deposit, in the amount of \$44.15 is owing to the Tenants for the period from April 1, 2021 to March 28, 2023.

Relief from eviction:

16. 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.
17. The Tenants testified that as of the hearing date, their current monthly income is insufficient to pay the monthly rent in full, let alone the outstanding arrears. The Tenant Lorie-Ann Cotter testified that she suffered a back injury on or about January 2022 and as such has been unable to work. The Tenant Nicholas Cotter also experienced a workplace injury in the last year and as such, is also unable to work.
18. Given the fact that the Tenants have experienced some unforeseen hardship, I find that it would not be unfair to delay termination to May 31, 2023 to allow the Tenants some additional time to secure alternate housing.

It is ordered that:

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:**

- \$11,106.00 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$12,336.00 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 \$8,534.17. 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 \$40.44 per day for the use of the unit starting March 29, 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 28, 2023, the Tenants will start to owe interest. This will be simple interest calculated from April 29, 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.

April 17, 2023

Date Issued

Fabio Quattrociochi

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 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.

*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	\$10,920.00
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	\$11,106.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 31, 2023

Rent Owing To May 31, 2023	\$12,150.00
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	\$12,336.00

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

Rent Owing To Hearing Date	\$9,592.32
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	- \$1,200.00
Less the amount of the interest on the last month's rent deposit	- \$44.15
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	\$8,534.17
Plus daily compensation owing for each day of occupation starting March 29, 2023	\$40.44 (per day)