



Order under Section 69 Residential Tenancies Act, 2006

Citation: Jones-Sherk v Monk, 2023 ONLTB 31015

Date: 2023-04-12

File Number: LTB-L-041196-22

In the matter of: 7A - BASEMENT, 7 PRISCILLA'S PL
BARRIE ON L4N5X4

Between: Cindy Jones-Sherk and Peter Sherk

Landlords

And

Amber-Lynn Murray and Jordon Monk

Tenants

Cindy Jones-Sherk and Peter Sherk (the 'Landlords') applied for an order to terminate the tenancy and evict Amber-Lynn Murray and Jordon Monk (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on February 27, 2023.

The Landlord's Legal Representative Kimberley Brock, the Landlords, and the Tenants attended the hearing. The Tenants declined to speak with Tenant Duty Counsel prior to the hearing.

Determinations:

1. The Landlords served the Tenants with a valid Notice to End Tenancy Early for Non-payment 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 \$1,350.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$44.38. This amount is calculated as follows: $\$1,350.00 \times 12$, divided by 365 days.
5. The Tenants have paid \$1,600.00 to the Landlords since the application was filed.
6. The rent arrears owing to February 28, 2023 are \$13,600.00.
7. The Landlords incurred costs of \$186.00 for filing the application and are entitled to reimbursement of those costs.
8. The Landlords collected a rent deposit of \$1,350.00 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 \$37.54 is owing to the Tenants for the period from January 18, 2022 to February 27, 2023.
10. It was the Landlords' evidence that since the N4 Notice was delivered, they have attempted to discuss a repayment plan with the Tenants, but the Tenants have not been receptive. They testified that it was partly due to difficulties communicating with the Tenants that they engaged the services of a property management company.
11. The Tenants testified that they live paycheque to paycheque but suggested that they would be able to pay \$600.00 monthly toward arrears payments.
12. 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.
13. The Tenants last made a payment in July 2022. Their explanation as to why they have not paid rent was unclear. I do not find their proposal to pay \$600.00 monthly toward arrears over approximately 2 years to be a realistic proposal. I accept the testimony of the Landlords that receiving no rental income while paying the expenses for the property, including mortgage, taxes, and increasing interest costs is causing them severe hardship.

It is ordered that:

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**
 - \$16,486.00 if the payment is made on or before April 23, 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 April 23, 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 April 23, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$12,246.72. 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 \$44.38 per day for the use of the unit starting February 28, 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 April 23, 2023, the Tenants will start to owe interest. This will be simple interest calculated from April 24, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before April 23, 2023, then starting April 24, 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 April 24, 2023.

April 12, 2023
Date Issued

Margo den Haan
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 October 24, 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 23, 2023

Rent Owing To April 30, 2023	\$17,900.00
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$1,600.00
Total the Tenant must pay to continue the tenancy	\$16,486.00

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

Rent Owing To Hearing Date	\$15,048.26
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$1,600.00
Less the amount of the last month's rent deposit	- \$1,350.00
Less the amount of the interest on the last month's rent deposit	- \$37.54
Total amount owing to the Landlord	\$12,246.72
Plus daily compensation owing for each day of occupation starting February 28, 2023	\$44.38 (per day)