



Order under Section 69 Residential Tenancies Act, 2006

Citation: Chandan v Dunn, 2023 ONLTB 30181

Date: 2023-04-11

File Number: LTB-L-015984-22

In the matter of: 450 PARTINGTON AVE
WINDSOR ON N9B2N5

Between: Amarjit Chandan Landlords
Baljit Chandan

And

Kyla L Dunn Shawn Tenants
Dunn

Amarjit Chandan and Baljit Chandan (the 'Landlords') applied for an order to terminate the tenancy and evict Kyla L Dunn and Shawn Dunn (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on March 24, 2023.

The second-named Landlord and the first-named Tenant attended the hearing.

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 \$1,470.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$48.33. This amount is calculated as follows: \$1,470.00 x 12, divided by 365 days.
5. The Tenants have paid \$825.00 to the Landlord since the application was filed.
6. The rent arrears owing to March 31, 2023, are \$23,165.00.
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 \$1,470.00 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 \$47.95 is owing to the Tenants for the period from May 28, 2021 to March 24, 2023.
10. The Tenant, Kyla Dunn (KD) testified that they were prepared to pay the Landlord \$500/month to begin paying off the arrears. This payment plan would last approximately 47 months. The Landlord, Baljit Chandran (BC), opposed this payment plan due to the low rate of recovery and the duration of such a proposal.
11. KD testified that her partner was now working full-time for the last few weeks and earning approximately \$5,600.00/month. The Tenant also stated that her disability payments were paying her \$1,400.00/month. No documentary evidence was presented to support the Tenant's testimony.
12. KD claimed that she has full custody of her two children, both teenagers. BC challenged this evidence and stated that it appeared that KD had shared custody of her daughters, only having ever observed them at the rental unit on weekends.
13. KD stated that the children go to school in Amherstburg, which is a town approximately 20km south of Windsor. KD stated that she has to pay a significant amount of money in transportation costs to maintain the children's schooling in Amherstburg. KD admitted at the hearing that the children's father lives in Amherstburg.
14. At the hearing, KD asked that if the Board orders an eviction, that the eviction date be delayed by 90 days to allow the Tenants time to find new accommodations. BC stated that he would be agreeable to a delay of 45 days to the eviction date.

Section 83

15. Section 83(2) of the *Residential Tenancies Act, 2006*, (the 'Act') states:

(2) If a hearing is held, the Board shall not grant the application unless it has reviewed the circumstances and considered whether or not it should exercise its powers under subsection (1).

16. Section 83(1) of the Act states:

83 (1) Upon an application for an order evicting a tenant, the Board may, despite any other provision of this Act or the tenancy agreement,

- (a) refuse to grant the application unless satisfied, having regard to all the circumstances, that it would be unfair to refuse; or
- (b) order that the enforcement of the eviction order be postponed for a period of time.

17. I am persuaded by BC's evidence that a payment plan would be prejudicial to the Landlords and granting a payment plan of such a duration of nearly four years would be unfair.
18. I am more persuaded by BC's testimony regarding the custody situation between KD and her children. Without corroborating evidence, I am not satisfied that KD has full custody of her children. I was persuaded by BC's argument that it is not credible that KD's children commute to a school over 20km away every weekday while the children's father lives in that town. Therefore, the impact of the displacement of the children will carry less weight when considering section 83.
19. I find that the Landlord's submission for a 45-day standard order to give the Tenants time to find new accommodations or pay the arrears to be fair in these circumstances. Therefore, in consideration of all of the disclosed circumstances in accordance with subsection 83(2) of the Act, I find that it would not be unfair to postpone the eviction until May 26, 2023, pursuant to subsection 83(1)(b) of the Act.

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:**
 - \$24,821.00 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$26,291.00 if the payment is made on or before May 26, 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 26, 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 26, 2023**
5. If the Tenants does not void the order, the Tenants shall pay to the Landlord \$21,522.97. 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 \$48.33 per day for the use of the unit starting March 25, 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 26, 2023, the Tenants will start to owe interest. This will be simple interest calculated from May 27, 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 26, 2023, then starting May 27, 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 Landlord on or after May 27, 2023.

April 11, 2023

Date Issued

Robert Brown

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 November 27, 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	\$25,460.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$825.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$24,821.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before May 26, 2023

Rent Owing To May 31, 2023	\$26,930.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords since the application was filed	- \$825.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$26,291.00

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

Rent Owing To Hearing Date	\$23,679.92
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$825.00
Less the amount of the last month's rent deposit	- \$1,470.00
Less the amount of the interest on the last month's rent deposit	- \$47.95
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total amount owing to the Landlords	\$21,522.97
Plus daily compensation owing for each day of occupation starting March 25, 2023	\$48.33 (per day)