



Order under Section 69 Residential Tenancies Act, 2006

Citation: Strano Property Management v Preston, 2023 ONLTB 28166

Date: 2023-03-31

File Number: LTB-L-041529-22

In the matter of: Main-93 Myrtle Street
St. Thomas, ON N5R 2E9

Between: Strano Property Management Landlord

And

Michael Gibson Tenants
Shayna Preston

Strano Property Management (the 'Landlord') applied for an order to terminate the tenancy and evict Michael Gibson and Shayna Preston (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 agent Nathalie Ramirez, the Landlord's Legal Representative Jason DiFruscia and the Tenants attended the hearing. The Tenants met with Tenant Duty Counsel prior to the hearing.

Determinations:

Adjournment Request

1. Prior to the hearing, the Tenants requested an adjournment of the matter so that they may upload and file evidence with the Board in an effort to raise issues under s. 82 of the *Residential Tenancies Act, 2006* (the 'Act').
2. The Tenants testified that they had been trying for approximately three weeks to upload information into the portal but submitted that their files keep corrupting.

3. The Landlord's Legal Representative opposed the request and submitted that they have not been provided any evidence from the Tenants, nor has the Landlord been contacted to discuss the issues or for assistance in serving their evidence on the Board.
4. The adjournment was denied for the following reasons: I was satisfied that the Tenants received the Landlord's N4 notice of termination in July of 2022 and that the Tenants were unable to provide a reasonable explanation as to why they failed to file their own application since that time, or why they never attempted to serve their evidence at the very least, upon the Landlord prior to the hearing.

Landlord's Application

5. 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.
6. As of the hearing date, the Tenants were still in possession of the rental unit.
7. The lawful rent is \$1,512.94. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$49.74. This amount is calculated as follows: \$1,512.94 x 12, divided by 365 days.
9. The Tenants have paid \$4,541.00 to the Landlord since the application was filed.
10. The rent arrears owing to February 28, 2023 are \$7,555.16.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$1,495.00 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.
13. Interest on the rent deposit, in the amount of \$36.06 is owing to the Tenants for the period from September 4, 2020 to February 27, 2023.

Section 83 Considerations

14. The Tenants acknowledged the arrears but testified that the unit has multiple maintenance issues including issues with the ceiling, leaks and mold and issues with the bathroom. The Tenants submitted that the Landlords had advised them that these issues would be repaired before they moved into the unit however, the Tenants submit that the issues persist.
15. The Tenants submitted that if the Landlords repaired all of their maintenance issues that the rent would be paid in full and admitted that they have been withholding rent due to the issues as outlined. The Tenants also suggested that they would be willing to pay \$400.00 a

month towards the arrears for the next five months and that if the maintenance issues are addressed before then that they would pay the arrears in full.

16. The Landlord's agent testified that various steps have been taken to address the Tenants' issues and that they had retained a foundation expert to address leaks in the basement.
17. In consideration of the fact that the Tenants withheld their rent, I do not believe their proposed payment plan is reasonable in the circumstances. That said, based on the evidence of the parties the Tenants will be given until the end of May to either pay their arrears or to find a new unit.
18. 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.

It is ordered that:

19. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
20. **The Tenants may void this order and continue the tenancy by paying to the Landlord:**
 1. \$9,254.10 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 2. \$10,767.04 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 3. \$12,279.98 if the payment is made on or before May 31, 2023. See Schedule 1 for the calculation of the amount owing.
21. 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.
22. **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.**
23. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$6,040.14. 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.

24. The Tenants shall also pay the Landlord compensation of \$49.74 per day for the use of the unit starting February 28, 2023 until the date the Tenants move out of the unit.
25. If the Tenants do not pay the Landlord the full amount owing on or before April 11, 2023, the Tenants will start to owe interest. This will be simple interest calculated from April 12, 2023 at 5.00% annually on the balance outstanding.
26. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
27. 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.
28. 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.

2023 ONL TB 28166 (CanLII)

March 31, 2023 _____ **Date Issued**

Jagger Benham

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.

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 March 31, 2023

Rent Owing To March 31, 2023	\$13,609.10
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$4,541.00
Total the Tenants must pay to continue the tenancy	\$9,254.10

B. 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	\$15,122.04
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$4,541.00
Total the Tenants must pay to continue the tenancy	\$10,767.04

C. 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	\$16,634.98
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$4,541.00
Total the Tenants must pay to continue the tenancy	\$12,279.98

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

Rent Owing To Hearing Date	\$11,926.20
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$4,541.00
Less the amount of the last month's rent deposit	- \$1,495.00
Less the amount of the interest on the last month's rent deposit	- \$36.06
Total amount owing to the Landlord	\$6,040.14
Plus daily compensation owing for each day of occupation starting February 28, 2023	\$49.74 (per day)