



Order under Section 69 Residential Tenancies Act, 2006

Citation: Famiglietti v Perrera, 2023 ONLTB 25787

Date: 2023-03-30

File Number: LTB-L-041108-22

In the matter of: UNIT 24, 2 BERNICK DR BARRIE
ON L4M5K4

Between: Peter Famiglietti Landlord

And

Jennifer Mcclinton Tenants Mike Perrera

Peter Famiglietti (the 'Landlord') applied for an order to terminate the tenancy and evict Jennifer Mcclinton and Mike Perrera (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

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

The Landlord, the Landlord's representative, Rodney Jackson and the Tenants, Jennifer Mcclinton attended the hearing.

Determinations:

1. The Landlord 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 \$2,400.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$78.90. This amount is calculated as follows: \$2,400.00 x 12, divided by 365 days.

5. The Tenants have paid \$500.00 to the Landlord since the application was filed.
6. The rent arrears owing to February 28, 2023 are \$20,400.00. The Tenant did not dispute the amount of the arrears owing to the Landlord.
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 \$2,400.00 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 \$44.71 is owing to the Tenants for the period from June 1, 2022 to February 27, 2023.

Relief from Eviction

10. 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 April 30, 2023 pursuant to subsection 83(1)(b) of the Act.
11. The Landlord testified that he made multiple attempts to negotiate the arrears with the Tenant and the Tenant made total payment of \$500.00 in arrears payments. I am satisfied that the Landlord met their obligation to attempt to negotiate a repayment plan with the Tenants.
12. The Landlord sought a standard eviction order based on his circumstances and testified that he would be meeting with the bank to discuss his financial obligations regarding this property as foreclosure is a possibility due to the high amount of arrears.
13. The Tenant wanted to preserve her tenancy and avoid eviction as she was not aware of the arrears as her partner did not disclose the arrears to her. The Tenant testified that the arrears arose as her partner, Mike had advised that he had paid the rent but he had not. The Tenant confirmed that she had to kick her partner out of the rental unit on September 16, 2022 due to his addiction issues.
14. The Tenant testified that she will be starting a new job on March 7, 2023 at a childcare centre. Her employment income is roughly of \$905.28 – 1,508.80 biweekly. She is owed roughly \$7,000.00 in back pay from her baby bonus once she files her taxes.
15. The Tenant admitted her monthly income only covers her monthly expenses and cannot even cover normal monthly rent let alone any arrears payments. She had been using her income to pay her oldest son's ADHD medication and autism therapies. The Tenant asked

for “at least 6 months” if she were to be evicted as she has a potential to move into a new home on or around July 27, 2023.

16. I find it would be unfair to grant the lengthy delay the Tenant requested. The Tenant’s limited income and unsubstantiated income baby bonus suggest there is not viable way for the Tenant to pay the rent or the arrears in a reasonable amount of time. There are substantial rent arrears owing with no realistic plan for how to pay it back. Therefore, I find there is no realistic way to impose a payment plan since there is no evidence supporting how any repayment plan could be satisfied.

17. I do however find that 30-day delay is fair in the circumstances, so the Tenant can arrange her affairs and move, or pay off the arrears and void the eviction order if she is able.

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:**
 - \$22,986.00 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$25,386.00 if the payment is made on or before April 30, 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 30, 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 30, 2023**
 5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$17,871.59. 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 \$78.90 per day for the use of the unit starting February 28, 2023 until the date the Tenants moves out of the unit.

7. If the Tenants do not pay the Landlord the full amount owing on or before April 30, 2023, the Tenants will start to owe interest. This will be simple interest calculated from May 1, 2023 at 5.00% annually on the balance outstanding.
8. The Landlord 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 April 30, 2023, then starting May 1, 2023, the Landlord 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 1, 2023.

March 30, 2023

Date Issued

Camille Clyne

Member, Landlord and Tenants 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 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	\$23,300.00
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$500.00
Total the Tenants must pay to continue the tenancy	\$22,986.00

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	\$25,700.00
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$500.00
Total the Tenants must pay to continue the tenancy	\$25,386.00

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

Rent Owing To Hearing Date	\$20,630.30
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$500.00
Less the amount of the last month's rent deposit	- \$2,400.00
Less the amount of the interest on the last month's rent deposit	- \$44.71
Total amount owing to the Landlord	\$17,871.59
Plus daily compensation owing for each day of occupation starting February 28, 2023	\$78.90 (per day)