



Order under Section 69 Residential Tenancies Act, 2006

Citation: Jani v Beattie, 2023 ONLTB 28188

Date: 2023-03-28

File Number: LTB-L-041774-22

In the matter of: Upper Unit-8 Beverley Street
St. Thomas, ON N5P 1S6

Between: Mambo Zama-Jani Landlords
Michael Jani

And

Mariah Wilson Tenants Tanya Beattie

Mambo Zama-Jani and Michael Jani (the 'Landlords') applied for an order to terminate the tenancy and evict Mariah Wilson and Tanya Beattie (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 Landlords and the Tenant Tanya Beattie attended the hearing. The Tenant met with Tenant Duty Counsel prior to 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 \$1,300.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$42.74. This amount is calculated as follows: \$1,300.00 x 12, divided by 365 days.

5. The Tenants have paid \$2,600.00 to the Landlords since the application was filed.
6. The rent arrears owing to February 28, 2023 are \$10,400.00.
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 \$1,300.00 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 \$28.15 is owing to the Tenants for the period from October 10, 2021 to February 27, 2023.

Tenants' Evidence

10. The Tenant disputes the arrears and testified that she made cash payments to the Landlords on July 29, 2022, August 3, 2022, October 10, 2022, November 5, 2022, November 14, 2022 and December 31, 2022. The Tenant testified that the Tenants only owe the rent for February and March of 2023.
11. The Tenant testified that she was not provided any receipts. The Landlords deny having ever received cash payments and submitted that they never made arrangements with the Tenants to accept payments in cash.
12. The Tenant entered into evidence various text messages she had received from the Landlords to show that the Landlords would attend at the building. The Tenants testified that this is when she made the cash payments to the Landlords however, none of the text messages alludes to rent payments by cash.
13. The Tenant was provided a week to provide post-hearing submissions to support her evidence that she made cash payments to the Landlord however, nothing was served upon the Board.
14. As such, on a balance of probabilities I am not satisfied that the Tenant made additional cash payments to the Landlords. The Landlords testified that they had only ever received e-transfer payments from the Tenants and outlined the payments that were made since the application.

Section 83 Considerations

15. The Tenant alleged that in April of 2022 a fire had broken out in the unit that resulted in her having to live in a hotel for 4 nights. She alleges the Landlord did not provide her any assistance with this. Further, the Tenant alleges that unit has rodents and that she is not sure the fire alarms are working.
16. Based on the Tenants' evidence eviction will be ordered but will be postponed until the end of April to allow the Tenants to either void the order or find a new unit.

17. 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 8, 2023 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

18. The tenancy between the Landlords and the Tenants is terminated unless the Tenants void this order.

19. The Tenants may void this order and continue the tenancy by paying to the Landlords:

1. \$11,886.00 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

2. \$13,186.00 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

20. 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.

21. 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.

22. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$9,111.83. 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 owe on the rent deposit are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.

23. The Tenants shall also pay the Landlords compensation of \$42.74 per day for the use of the unit starting February 28, 2023 until the date the Tenants move out of the unit.

24. If the Tenants do not pay the Landlords the full amount owing on or before April 8, 2023, the Tenants will start to owe interest. This will be simple interest calculated from April 9, 2023 at 5.00% annually on the balance outstanding.

25. The Landlords or the Tenants shall pay to the other any sum of money that is owed as a result of this order.

26. If the unit is not vacated on or before April 30, 2023, then starting May 1, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

27. 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 May 1, 2023.

March 28, 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 October 31, 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	\$14,300.00
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$2,600.00
Total the Tenants must pay to continue the tenancy	\$11,886.00

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	\$15,600.00
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$2,600.00
Total the Tenants must pay to continue the tenancy	\$13,186.00

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

Rent Owing To Hearing Date	\$12,853.98
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$2,600.00
Less the amount of the last month's rent deposit	- \$1,300.00
Less the amount of the interest on the last month's rent deposit	- \$28.15
Total amount owing to the Landlords	\$9,111.83
Plus daily compensation owing for each day of occupation starting February 28, 2023	\$42.74 (per day)