



Order under Section 69 Residential Tenancies Act, 2006

Citation: Starlight Canadian Residential Growth Fund 3 v Walker, 2023 ONLTB 24106

Date: 2023-03-28

File Number: LTB-L-043619-22

In the matter of: 103, 6 BRYBECK CRES
KITCHENER ON N2M2C6

Between: Starlight Canadian Residential Growth Fund Landlord
3

And

Mary Ann Walker Tenant

Starlight Canadian Residential Growth Fun 3 (the 'Landlord') applied for an order to terminate the tenancy and evict Mary Ann Walker (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on March 1, 2023.

The Landlord and the Tenant attended the hearing.

Determinations:

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant 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 Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,016.39. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$33.42. This amount is calculated as follows: \$1,016.39 x 12, divided by 365 days.
5. The Tenant has paid \$1,151.60 to the Landlord since the application was filed.
6. The rent arrears owing to March 31, 2023 are \$8,758.77.

7. The Landlord is entitled to \$0.00 to reimburse the Landlord for administration charges and \$85.00 for bank fees the Landlord incurred as a result of 0 cheque given by or on behalf of the Tenant which was returned NSF.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$974.85 from the Tenant 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.
10. Interest on the rent deposit, in the amount of \$4.01 is owing to the Tenant for the period from January 1, 2023 to March 1, 2023.
11. The Tenant did not dispute the rent arrears but submitted that she was qualified to receive monthly Old Age benefits of \$1600.00 as of August 2021 but received the benefits in April 2022. The Tenant rejected the Landlord's proposed \$671.00 monthly payment plan and sought a \$300.00 monthly payment plan due to her monthly expenses. The Tenant claims she is discussing with a potential tenant who might move into the unit by April 01, 2023.
12. The Landlord expressed doubt about the Tenant's claim of being unable to pay her rent due to the delay in receiving her Old Age benefits. The Landlord claim that the Tenant failed to contact her for any payment plans before the hearing. The Landlord asserts that the \$300.00 monthly payment plan seems unrealistic and may put her in further financial distress. The Landlord sought a standard eviction order.
13. 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 28, 2023 pursuant to subsection 83(1)(b) of the Act.
14. On balance, postponing the eviction to April 28, 2023, is appropriate and fair as it gives the Tenant time to find a co-tenant whose rent payments could contribute to the payment plan sought by the Landlord. This requirement will alleviate any prejudice to the Landlord since this order directs the Court Enforcement Office (Sheriff) to give vacant possession of the unit to the Landlord on or after April 29, 2023, should the parties fail to come up with a payment plan or if the Tenant fails to pay the amount required to void this order.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$9,029.77 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$10,046.16 if the payment is made on or before April 28, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after April 28, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
 4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before April 28, 2023**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$7,067.94. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
 6. The Tenant shall also pay the Landlord compensation of \$33.42 per day for the use of the unit starting March 2, 2023 until the date the Tenant moves out of the unit.
 7. If the Tenant does not pay the Landlord the full amount owing on or before April 8, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 9, 2023 at 5.00% annually on the balance outstanding.
 8. The Landlord or the Tenant 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 28, 2023, then starting April 29, 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 April 29, 2023.

March 28, 2023
Date Issued

Percy Laryea
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 29, 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 Tenant 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	\$9,910.37
Application Filing Fee	\$186.00
NSF Charges	\$85.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,151.60
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$9,029.77

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before April 28, 2023

Rent Owing To April 30, 2023	\$10,926.76
Application Filing Fee	\$186.00
NSF Charges	\$85.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,151.60
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$10,046.16

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

Rent Owing To Hearing Date	\$8,927.40
Application Filing Fee	\$186.00
NSF Charges	\$85.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,151.60
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$974.85

Less the amount of the interest on the last month's rent deposit	- \$4.01
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$7,067.94
Plus daily compensation owing for each day of occupation starting March 2, 2023	\$33.42 (per day)