



Order under Section 69 Residential Tenancies Act, 2006

Citation: Fernandez v De laet, 2023 ONLTB 27488

Date: 2023-03-24

File Number: LTB-L-047200-22

In the matter of: 2, 104 HARVEY ST
CHATHAM ON N7M1M3

Between: Abhay Fernandez Landlord

And

Rick De laet Tenant

Abhay Fernandez (the 'Landlord') applied for an order to terminate the tenancy and evict Rick De laet (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 15, 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 \$777.98. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$25.58. This amount is calculated as follows: \$777.98 x 12, divided by 365 days.
5. The Tenant has paid \$2,778.00 to the Landlord since the application was filed.
6. The rent arrears owing to March 31, 2023 are \$3,350.94.
7. The Tenant disputes the total amount of arrears owing to the Landlord and submits that he paid cash for some of the periods alleged where he paid no rent. The Tenant had no

record of when he paid cash to the Landlord, no receipts or any documentation to substantiate his position. The Landlord confirmed that the Tenant paid \$500.00 towards the arrears on March 1, 2023.

8. In *Mauti v. Gibbs*, 2019 ONSC 3355 (CanLII), the Divisional Court held at paragraph 27 that while the landlord bears the burden of proof in a rent arrears application, it is difficult for a landlord to prove a negative (ie: non-payment of rent). Therefore, "...while the ultimate persuasive burden never shifts, once a landlord denies receiving funds, the tenant will have an evidentiary burden or a chance to advance some evidence to positively prove that he or she paid rent".
9. The Tenant has the burden of proving that he made these payments and I am not satisfied, on a balance of probabilities, that the Tenant has met this burden. As a result, I am satisfied that the Tenant has not paid the total rent the Tenant was required to pay for the period as set out in this application.
10. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. The Landlord collected a rent deposit of \$750.00 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.
12. Interest on the rent deposit, in the amount of \$34.18 is owing to the Tenant for the period from September 28, 2019 to March 15, 2023.
13. The Landlord submits that this is not the first time the Tenant has been in rent arrears and referred the Board to file SWL-56074-21 where the parties entered into a payment plan and as soon as it was satisfied, the Tenant went back into rent arrears. The Tenant submits that he has been robbed twice with police involved and had a health issue in December, 2022. I accept the above submissions and I am not satisfied that it would be unfair to the Landlord to give the Tenant some additional time to move out in light of the circumstances. However, I am not prepared to delay eviction for months. Given the quantum of the arrears, I am not prepared to grant a delay of more than one month. 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 24, 2023 pursuant to subsection 83(1)(b) of the Act.

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:**

- \$3,536.94 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$4,314.92 if the payment is made on or before April 24, 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 24, 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 24, 2023.**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$2,358.48. 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 Tenant. See Schedule 1 for the calculation of the amount owing.
 6. The Tenant shall also pay the Landlord compensation of \$25.58 per day for the use of the unit starting March 16, 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 4, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 5, 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 24, 2023, then starting April 25, 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 25, 2023.

March 24, 2023

Date Issued

Heather Chapple

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 25, 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 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	\$6,128.94
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,778.00
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	\$3,536.94

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before April 24, 2023

Rent Owing To April 30, 2023	\$6,906.92
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,778.00
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	\$4,314.92

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

Rent Owing To Hearing Date	\$5,734.66
Application Filing Fee	\$186.00

NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,778.00
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	- \$750.00
Less the amount of the interest on the last month's rent deposit	- \$34.18
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	\$2,358.48
Plus daily compensation owing for each day of occupation starting March 16, 2023	\$25.58 (per day)