



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Skyline Living v Carty, 2023 ONLTB 27545

Date: 2023-03-23

File Number: LTB-L-046127-22

In the matter of: 907, 766 JOHN COUNTER BLVD KINGSTON
ON K7K6P1

Between: Skyline Living Landlord

And

Leah Carty and Tenant
Norman Blackhurst

Skyline Living (the 'Landlord') applied for an order to terminate the tenancy and evict Leah Carty and Norman Blackhurst (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 13, 2023.

Only the Landlord's agent, Julia Keeping, 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 \$2,042.86. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$67.16. This amount is calculated as follows: \$2,042.86 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.

6. The rent arrears owing to March 31, 2023 are \$17,585.74.
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 \$2,042.86 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.
9. Interest on the rent deposit, in the amount of \$41.98 is owing to the Tenant for the period from May 18, 2022 to March 13, 2023.

Pre Authorized Payment

10. The Landlord claimed \$260.00 for administration charges the Landlord incurred as a result of non payment of rent by the Tenant due to 13 transactions deemed “insufficient funds” by the Tenants financial institution.
11. Subsection 87(5) of the Act permits the Board to award NSF charges that are charged by financial institutions in relation to “cheques” tendered to the landlord by or on behalf of the tenant and administration charges in relation to “cheques”.
12. The charges must be in relation to a “cheque”, and the Legislature has not authorized the awarding of any charges in relation to any other kind of negotiable instrument or payment method.
13. The evidence submitted by the Landlord shows the Tenant’s rent payments are set-up for pre-authorized debit and the Tenant did not pay by cheque, and therefore the Landlord’s claim for NSF charges is denied.
14. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Residential Tenancies Act, 2006 (the 'Act'), including the impact of COVID-19 on the parties and, including submissions from the Landlord’s agent that the Tenant does not have young children or any persons with special needs that the Board needs to consider living with them, and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
15. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
16. This order contains all reasons for the determinations and order made. No further reasons will be issued.

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:
 - \$17,771.74 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$19,814.60 if the payment is made on or before April 3, 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 3, 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 3, 2023
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$14,517.12. 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 \$67.16 per day for the use of the unit starting March 14, 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 3, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 4, 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 3, 2023, then starting April 4, 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 4, 2023.

March 23, 2023

Date Issued

Greg Brocanier

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 4, 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	\$17,585.74
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	\$17,771.74

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before April 3, 2023

Rent Owing To April 30, 2023	\$19,628.60
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	\$19,814.60

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

Rent Owing To Hearing Date	\$16,415.96
Application Filing Fee	\$186.00
NSF Charges	\$0.00

Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	- \$2,042.86
Less the amount of the interest on the last month's rent deposit	- \$41.98
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	\$14,517.12
Plus daily compensation owing for each day of occupation starting March 14, 2023	\$67.16 (per day)