



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

Citation: Concord Apartments v Patane, 2023 ONLTB 26298

Date: 2023-03-22

File Number: LTB-L-044385-22

In the matter of: 201, 467 CHAMBERLAIN ST
PETERBOROUGH ON K9J4L3

Between: Concord Apartments Landlord

And

Charlie Patane, Michele Burzese, and Victoria Patane Tenants

Concord Apartments (the 'Landlord') applied for an order to terminate the tenancy and evict Charlie Patane, Michele Burzese and Victoria Patane (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on March 2, 2023.

The Landlord, their Representative Dara Saunders and the Tenants Victoria Patane and Michele burzese attended the hearing.

Determinations:

Scope of the Hearing

1. Pursuant to section 82 of the *Residential Tenancies Act, 2006* ('the Act') the Tenants filed evidence and a list of tenant issues with the Board. The Tenants did not provide any of their disclosure to the Landlord until the day of the hearing.
2. Section 82(2) of the Act says in part that a tenant shall give advance notice to the landlord of the tenant issues they intend to raise, that notice shall be given within the time set out in the Rules, and that the notice shall be given in writing and comply with the rules.

3. Rule 19.4 of the Board's Rules says in part that a tenant who intends to raise issues under sections 82 of the Act shall provide the other party and the Board a written description of each issue and all evidence they intent to rely on, at least 7 days before the hearing.
4. The notice of hearing that was sent to the parties says the following:

“Each party must give the other party a complete copy of all of the evidence they want to use during the hearing as soon as possible but at least 7 days before the hearing.

Each party must also upload their evidence to the Tribunals Ontario Portal at www.tribunalsontario.ca/en/tribunals-ontario-portal/ at least 7 days before the hearing.”
5. As the Tenants did not comply with section 82(2) of the Act, the Board's rules, nor provide a satisfactory explanation for why they did not comply, the hearing was limited to only the Landlord's application, and I did not hear the tenant issues.

The Monthly Rent

6. The parties disagree about what the monthly rent is. The Landlord submits that the monthly rent at the time the N4 Notice of Termination was served was \$1,500.00 and increased to \$1,537.50 as of February 1, 2023.
7. The Tenant Michele Burzese testified that the parties entered into an oral agreement as of July 2022 that the monthly rent would be reduced by \$250.00 until the Landlord resolved the Tenants complaints about a neighbouring Tenant.
8. Audio recordings of the parties discussing a potential agreement were entered into evidence. I accept on a balance of probabilities that the parties did discuss a potential rent reduction but at no time on the audio recordings do the parties finalize the agreement. Additionally, in the emails between the parties that were entered into evidence, the Landlord explicitly states that they are not willing to enter into an agreement for a rent reduction. In an email sent September 6, 2022 Landlord writes:

“During our last meeting on August 24th you requested a rent reduction of \$250 until the day Shawn Rose moves out. Being that we have done all that we can do within our power and that the landlord is at the mercy of the LTB no contingent rent reduction will be given. The total rent owing to date is \$4500 (\$1500 July, \$1500 August, \$1500 September)...”
9. As the audio recordings do not show the parties entering into an agreement and the email evidence states that there was no agreement, I find on a balance of probabilities that the parties did not agree to an indefinite rent reduction until the issue with the neighbouring tenant was resolved. As such, the lawful rent is \$1,537.50. It is due on the 1st day of each month.

The Application

10. The Landlord 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.
11. As of the hearing date, the Tenants were still in possession of the rental unit.
12. The lawful rent is \$1,537.50. It is due on the 1st day of each month.
13. Based on the Monthly rent, the daily rent/compensation is \$50.55. This amount is calculated as follows: $\$1,537.50 \times 12$, divided by 365 days.
14. The Tenants have not made any payments since the application was filed.
15. The rent arrears owing to March 31, 2023 are \$13,575.00.
16. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
17. The Landlord collected a rent deposit of \$1,500.00 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.
18. Interest on the rent deposit, in the amount of \$24.27 is owing to the Tenants for the period from September 7, 2021 to March 2, 2023.
19. The Tenants requested relief from eviction in the form of a repayment plan. The Tenants submitted that they could pay \$350.00 towards the arrears each month. The Landlord was opposed to a repayment plan. I do not think it would be fair in the circumstances to impose a repayment plan as I am not satisfied that the Tenants would abide by it. This is because there have been no payments since the application was filed and because of the large amount of outstanding arrears.
20. 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. This is to provide the Tenants with time to either find new living arrangements or pay off the outstanding arrears. I have declined to postpone the eviction any further than April 8, 2023 because of the large amount of outstanding arrears.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants voids this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**

- \$13,761.00 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$15,298.50 if the payment is made on or before April 8, 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 8, 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 8, 2023.**
 5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$10,788.42. 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 Tenants shall also pay the Landlord compensation of \$50.55 per day for the use of the unit starting March 3, 2023 until the date the Tenant moves out of the unit.
 7. If the Tenants do not pay the Landlord the full amount owing on or before April 2, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 3, 2023 at 5.00% annually on the balance outstanding.
 8. If the unit is not vacated on or before April 8, 2023, then starting April 9, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
 9. 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 9, 2023.

March 22, 2023 _____ **Date Issued**

Amanda Kovats

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 9, 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	\$13,575.00
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
Total the Tenant must pay to continue the tenancy	\$13,761.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before April 8, 2023

Rent Owing To April 30, 2023	\$15,112.50
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
Total the Tenant must pay to continue the tenancy	\$15,298.50

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

Rent Owing To Hearing Date	\$12,138.60
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 of the last month's rent deposit	- \$1,500.00
Less the amount of the interest on the last month's rent deposit	- \$24.27
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	\$10,800.33
Plus daily compensation owing for each day of occupation starting March 3, 2023	\$50.55 (per day)

