



Order under Sections 30 & 69 Residential Tenancies Act, 2006

Citation: Kibaara v Sauve, 2023 ONLTB 26669

Date: 2023-03-20

File Number: LTB-L-063532-22 &
LTB-T-055692-22

In the matter of: 11661 DILLON DR
WINDSOR ON N8P1L3

Between: Evalyne Kibaara Landlord

And

Melissa Sauve and Todd Sauve Tenants

Evalyne Kibaara (the 'Landlord') applied for an order to terminate the tenancy and evict Melissa Sauve and Todd Sauve (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

The Tenants applied for an order determining that the Landlord failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards.

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

Only the Landlord attended the hearing.

As of 9:30 a.m., the Tenants were not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

T6 Application:

1. The Tenant, M. Linden, sent a request to the Board to withdraw the Tenants' application on March 12, 2023. She indicated in her letter to the Board that she would not attend the hearing on March 13, 2023, and that she intends to vacate the rental unit by April 1, 2023.

L1 Application:

2. 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.
3. As of the hearing date, the Tenants were still in possession of the rental unit.
4. The lawful rent is \$1,900.00. It is due on the 20th day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$62.47. This amount is calculated as follows: \$1,900.00 x 12, divided by 365 days.
6. The Tenants have not made any payments since the application was filed.
7. The rent arrears owing to March 19, 2023 are \$17,100.00.
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 \$1,800.00 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.
10. Interest on the rent deposit, in the amount of \$103.96 is owing to the Tenants for the period from December 20, 2018 to March 13, 2023.
11. The Landlord said that she sent numerous emails to the Tenants to discuss the arrears, and she asked them to pay off the balance each month. She said that the Tenants' only response was that the Landlord owed them money for repairs and renovations that they had carried out. The Landlord said that she has repeatedly asked the Tenants for receipts for the repairs, and they have not sent any.
12. The Landlord also said that she has had to move out of the place where she was living because of the money owed to her by the Tenants, and she is now homeless.
13. I have considered all of the disclosed circumstances above in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate with the Tenants for repayment of the arrears, and I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. In particular, the Tenants have indicated that they intend to move out of the rental unit in any case. In addition, the Landlord's uncontested evidence is that she has had to move out of the accommodation where she was living

because of the debt owed to her by the Tenants, and she is now homeless. Therefore, I find that the evidence proves, on a balance of probabilities, that the tenancy is no longer viable and it is prejudicial to the Landlord for it to continue.

It is ordered that:

1. The Tenants' application is withdrawn.
2. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
3. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$17,186.00 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.
4. 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 March 31, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
5. **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 March 31, 2023.**
6. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$12,893.81. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
7. The Tenants shall also pay the Landlord compensation of \$62.47 per day for the use of the unit starting March 14, 2023 until the date the Tenants moves out of the unit.
8. If the Tenants do not pay the Landlord the full amount owing on or before March 31, 2023, the Tenants will start to owe interest. This will be simple interest calculated from April 1, 2023 at 5.00% annually on the balance outstanding.
9. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
10. If the unit is not vacated on or before March 31, 2023, then starting April 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
11. 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 1, 2023.

March 20, 2023 _____ **Date Issued**

Nancy Morris

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 1, 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 April 19, 2023	\$17,100.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$17,186.00

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

Rent Owing To Hearing Date	\$14,611.87
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,800.00

Less the amount of the interest on the last month's rent deposit	- \$103.96
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total amount owing to the Landlord	\$12,893.91
Plus daily compensation owing for each day of occupation starting March 14, 2023	\$62.47 (per day)