



Order under Section 69 Residential Tenancies Act, 2006

Citation: Chandel v Ruiz, 2023 ONLTB 26089

Date: 2023-03-17

File Number: LTB-L-038199-22

In the matter of: Upper Floor - 5 PINK ST
BRAMPTON ON L6P3M9

Between: Anita Chandel and Kulwant Singh Chandel Landlord

And

Karla Ruiz and Nicholas Alexander david Tenants
Randel

Anita Chandel and Kulwant Singh Chandel (the 'Landlord') applied for an order to terminate the tenancy and evict Karla Ruiz and Nicholas Alexander david Randel (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 Anita Chandel and the Tenant Karla Ruiz attended the hearing. The Landlord was also assisted by her daughter Mischelle Chandel.

Determinations:

1. 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.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$3,400.00. It is due on the 20th day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$111.78. This amount is calculated as follows: \$3,400.00 x 12, divided by 365 days.

5. The parties disagreed about what payments the Tenants have made since the application was filed and the amount of outstanding arrears. The Landlord submits that the Tenant has paid \$12,300.00 since the application was filed and owes \$18,420.00 to March 19, 2023. The Tenant testified that she needed more time to go through her bank statements but believed the arrears outstanding were only \$8,780.00.
6. The Landlord introduced into evidence a breakdown of all the payments they received. The Tenant was provided a copy of that document at the hearing and asked what payments the Landlord was missing. The Tenant testified that she thought there was a payment missing from December 2022.
7. The party bringing an application always carries the ultimate burden of proving their application on a balance of probabilities. However, once a landlord provides evidence that rent was not paid, the onus shifts to the Tenant to positively establish that the rent was in fact paid. The notice of hearing was mailed out to the Tenants as of February 18, 2023 and since that time the Tenants have been on notice that a rent arrears hearing was scheduled. That the Tenants were not served with the Landlord's breakdown until the hearing date did not prohibit the Tenants from gathering their own financial information to file as evidence.
8. Absent any supporting documentation I am not satisfied based on the Tenant's testimony alone that the Landlord has failed to credit them with a payment in December 2022. I also have concerns about the Tenant's testimony regarding the outstanding arrears because the Tenant is alleging that the Landlord is wrong by nearly \$10,000.00 but only mentioned one rent payment in December as being missing from the Landlord's numbers. One payment would not account for the discrepancy between the numbers. As such, based on the Landlord's rent breakdown I find on a balance of probabilities that Tenants have paid \$12,230.00 to the Landlord since the application was filed.
9. The Landlord stated that the rent arrears owing to March 19, 2023 are \$18,420.00. However, I find on a balance of probabilities that the rent arrears owing to March 19, 2023 are \$16,270.00. This is calculated by adding the arrears owed at the time of the application (\$1,300.00), adding the new rent that has come due (\$27,200.00) and subtracting the payments made by the Tenants since the application was filed (\$12,230.00).
10. The Landlord's inaccuracy with their arrears total did cause me to have concern about the reliability of their evidence, however, I found their written evidence that listed what payments were made and when to be reliable and based my final assessment of the outstanding arrears on that document.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. There is no last month's rent deposit.

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 March 31, 2023 pursuant to subsection 83(1)(b) of the Act. In making that determination I have considered the Tenant's testimony that she needs time to find new living accommodations for herself and the 5 children living with her. However, I have declined to postpone the eviction any further than March 31, 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 void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$16,456.00 if the payment is made on or before March 19, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$19,856.00 if the payment is made on or before March 31, 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 Tenant has 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 Tenant 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 March 31, 2023.**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$14,285.58. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$111.78 per day for the use of the unit starting March 3, 2023 until the date the Tenants moves out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before March 28, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 29, 2023 at 5.00% annually on the balance outstanding.

8. 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.
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 1, 2023.

March 17, 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 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before March 19, 2023

Rent Owing To March 19, 2023	\$28,500.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$12,230.00
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	\$16,456.00

B. 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 April 19, 2023	\$31,900.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$12,230.00
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	\$19,856.00

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

Rent Owing To Hearing Date	\$26,329.58
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$12,230.00
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	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
Total amount owing to the Landlord	\$14,285.58
Plus daily compensation owing for each day of occupation starting March 3, 2023	\$111.78 (per day)

