



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

Citation: Perri v Rego, 2023 ONLTB 25666

2023 ONLTB 25666 (CanLII)

**File
Number:** LTB-L-059096-22

In the matter of: 51 MALCOLM CRES
BRAMPTON ON L6S3C7

Between: Emilia Perri Landlord

And

Kevin Rego Tenant

Emilia Perri (the 'Landlord') applied for an order to terminate the tenancy and evict Kevin Rego (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on March 6, 2023.

The Landlord's Legal Representative Elizabeth Iellimo, the Landlord, the Tenant and the Tenant's Representative Antonietta Marincola attended the hearing.

Determinations:

Preliminary Issues:

1. Prior the commencement of the hearing, the Tenant requested an adjournment as he wished to file a T2 and T6 application.
2. The Landlord's Legal Representative was opposed to the adjournment request as the Tenant was served with all the documentation pertaining to this matter, including the notice of hearing which was forwarded to him on February 14, 2023. The Landlord's Legal Representative also stated that evidence was served on the Tenant on February 22, 2023 and referred the Board to a certificate of service that they had filed.
3. The Landlord's Legal Representative also opposed the adjournment request stating that their request to shorten time had been granted by the Board and submits that the arrears are substantial and the Landlord is elderly with declining health.
4. Upon review of the Board's files, there was no section 82 issues form filed by the Tenant and the Landlord's Legal Representative confirmed that the Tenant had not given any documentation or notice to the Landlord.
5. Having considered a number of factors including the reason for the adjournment request, the position of the parties, the issues in the applications, the history of the proceeding and any prejudice that may result from granting or denying the request, the adjournment was denied.

L1 Application:

6. 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.
7. As of the hearing date, the Tenant was still in possession of the rental unit.
8. The lawful rent is \$1,750.00. It is due on the 15th day of each month.
9. Based on the Monthly rent, the daily rent/compensation is \$57.53. This amount is calculated as follows: \$1,750.00 x 12, divided by 365 days.
10. The Tenant has not made any payments since the application was filed.

11. The Tenant submits that the Landlord's grandson would normally attend the rental unit to collect rent cheques but he stopped attending and therefore the Tenant was not "chasing after the Landlord to pay rent". The Tenant did not mail any rent cheques to the Landlord as he states he did not have any contact information for the Landlord and the Landlord has had no communication with the Tenant.
12. I considered whether the picking up of rent cheques by the Landlord was a term of the tenancy agreement or a courtesy that was offered by the Landlord and therefore a practice that the Landlord was within her rights to change. Based on the evidence before me, I am satisfied that the Landlord's practice of having her grandson pick up rent payments is not a term of the tenancy agreement. I find that the Landlord was entitled to alter that practice and that the Landlord's altering the practice of picking up the rent payment is not unreasonable or burdensome upon the Tenant as he could have easily made alternate arrangements or made other payment options. Based on the evidence and submissions before me, I am satisfied that the grandson's previous attendances was simply a practice of picking up rent payments and not a term of the tenancy agreement.
13. Based on the evidence and submissions before me, I am satisfied, on a balance of probabilities, that the Tenant has not paid rent to the Landlord and that rent arrears owing to March 14, 2023 are \$14,000.00.
14. The Tenant states that he should not be responsible for an administration charge the Landlord insured as a result of a cheque on behalf of the Tenant which was returned NSF. The Tenant submits that the Landlord failed to call him to advise that a rent cheque was about to be cashed. I am satisfied that the Tenant is responsible for this amount as he issued a cheque to the Landlord where there were insufficient funds in the bank account. The Landlord is entitled to \$20.00 to reimburse the Landlord for administration charges the Landlord incurred as a result of 1 cheque given by or on behalf of the Tenant which was returned NSF.
15. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
16. The Landlord collected a rent deposit of \$1,800.00 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.
17. Interest on the rent deposit, in the amount of \$32.05 is owing to the Tenant for the period from June 20, 2022 to March 6, 2023.
18. When asked if the Tenant had the outstanding rent available, the Tenant's Representative stated that the rent money is in her bank account but the Tenant will not give the Landlord "a penny" as the Landlord has not attended the rental unit to collect the rent.
19. The Tenant states that he wants to move out of the rental unit by the end of May, 2023 but they would have a place to go to by the middle of April, 2023. As well, the partner of the Tenant, Antonietta Marincola has three children ages 8, 14 and 16 years residing in the rental unit.

20. The parties acknowledged and agreed that the Landlord has not had any discussions with the Tenant regarding attempts to negotiate a repayment agreement however, the Tenant's Representative clearly stated that there was no plan to give the Landlord even "a penny".
21. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act') and I am not satisfied that it would be unfair to the Landlord to give the Tenant some additional time to move in light of the circumstances. However, I am not prepared to delay eviction until the end of May, 2023 as the Tenant suggests. While I have considered that the Tenant has children residing with him, given the quantum of the arrears, I am not prepared to grant a delay of more than three weeks. As a result, the eviction will be delayed to April 14, 2023.

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:**
 - \$13,261.42 if the payment is made on or before April 14, 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 14, 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 14, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$11,774.55. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. 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 \$57.53 per day for the use of the unit starting March 7, 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 14, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 15, 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 14, 2023, then starting April 15, 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 15, 2023.

March 22, 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 15, 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 April 14, 2023

Rent Owing To April 14, 2023	\$13,055.42
Application Filing Fee	\$186.00
NSF Charges	\$20.00
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	\$13,261.42

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

Rent Owing To Hearing Date	\$13,400.60
Application Filing Fee	\$186.00
NSF Charges	\$20.00

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	- \$1,800.00
Less the amount of the interest on the last month's rent deposit	- \$32.05
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	\$11,774.55
Plus daily compensation owing for each day of occupation starting March 7, 2023	\$57.53 (per day)