



Order under Section 69 Residential Tenancies Act, 2006

Citation: Rosslyn Arms Apartments v Dela cruz, 2023 ONLTB 22400

Date: 2023-02-28

File Number: LTB-L-036643-22

In the matter of: 413-745 Stevenson Road North
Oshawa, ON L1J 5P4

Between: Rosslyn Arms Apartments Landlord

And

Bernard Fitzpatrick Tenants
Evelyn Dela Cruz

Rosslyn Arms Apartments (the 'Landlord') applied for an order to terminate the tenancy and evict Bernard Fitzpatrick and Evelyn Dela Cruz (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

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

Only the Landlord's Legal Representative Kathryn Bucan attended the hearing.

As of 10:00 am, 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:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment 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 \$1,675.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$55.07. This amount is calculated as follows: \$1,675.00 x 12, divided by 365 days.
5. The Tenants have paid \$11,900.00 to the Landlord since the application was filed.
6. The rent arrears owing to February 28, 2023 are \$2,175.00.
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 \$1,675.00 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.
9. Interest on the rent deposit, in the amount of \$63.47 is owing to the Tenants for the period from February 1, 2020 to February 13, 2023.
10. 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 whether the Landlord attempted to negotiate a repayment agreement with the Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

11. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
12. **The Tenants may void this order and continue the tenancy by paying to the Landlord:**
 1. \$2,361.00 if the payment is made on or before February 28, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 2. \$4,036.00 if the payment is made on or before March 11, 2023. See Schedule 1 for the calculation of the amount owing.
13. 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 11, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
14. **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 11, 2023.**
15. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the arrears of rent, compensation and the cost of filing the application the Landlord is entitled to by \$336.56. See Schedule 1 for the calculation of the amount owing. However, the Landlord is authorized to deduct from the amount owing to the Tenants \$55.07 per day for compensation for the use of the unit starting February 14, 2023 until the date the Tenants moves out of the unit.
16. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
17. If the unit is not vacated on or before March 11, 2023, then starting March 12, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

18. 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 March 12, 2023.

February 28, 2023

Date Issued

Jagger Benham
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 September 12, 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 February 28, 2023

Rent Owing To February 28, 2023	\$14,075.00
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$11,900.00
Total the Tenants must pay to continue the tenancy	\$2,361.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before March 11, 2023

Rent Owing To March 31, 2023	\$15,750.00
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$11,900.00
Total the Tenants must pay to continue the tenancy	\$4,036.00

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

Rent Owing To Hearing Date	\$13,115.91
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$11,900.00
Less the amount of the last month's rent deposit	- \$1,675.00
Less the amount of the interest on the last month's rent deposit	- \$63.47
Total amount owing to the Landlord	\$(336.56)
Plus daily compensation owing for each day of occupation starting February 14, 2023	\$55.07 (per day)

