



Order under Section 69 Residential Tenancies Act, 2006

Citation: Gut v Magee, 2023 ONLTB 20107

Date: 2023-02-21

File Number: LTB-L-036313-22

In the matter of: 4, 366 HILTON AVE
London ON N5W2R6

Between: Damian Gut Landlord

And

Peggy Magee Tenant

Damian Gut (the 'Landlord') applied for an order to terminate the tenancy and evict Peggy Magee (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 2, 2023. The Landlord and the Tenant attended the hearing.

Determinations:

1. The Landlord served the Tenant with a valid Notice to End the 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 on June 28, 2022.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,189.77. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$39.12. This amount is calculated as follows: \$1,189.77 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to February 28, 2023 are \$10,765.62. The Tenant agreed that these arrears are owed to the Landlord.
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 \$1,147.00 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.
9. Interest on the rent deposit, in the amount of \$18.79 is owing to the Tenant for the period from December 1, 2020 to February 2, 2023.

10. The Landlord testified that he called the Tenant many times by phone since September 2022 to establish an arrears repayment plan, and the Tenant promised to make payments as per the payment plan; however, the Tenant never made the payments when they became due as per the plan.
11. The Tenant testified that she was unable to pay the rent as a result of financial difficulties that she was experiencing. The Tenant explained that her sickness and accident benefits ceased in June 2022, and without a job, she had no income or money to pay the rent. The Tenant remarked that her monthly income is \$733.00 from Ontario Works benefits that she has received since January 31, 2023. The Tenant stated that she is not currently employed, but at some point she will search for employment.
12. The Tenant testified further that she hopes to find a roommate starting in March 2023 who could assist her with her monthly rent payments. The Tenant asserted that she has significant stress, and wants to retain the tenancy because she has no where else to live.
13. 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 Tenant, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
14. On the basis of the evidence provided, I am satisfied that the Tenant has significant rent arrears and a monthly income that is insufficient to pay the rent arrears and on-going rent. The Tenant has not provided a viable and specific financial plan that would allow her to pay the rent arrears and on-going rent. Furthermore, the Tenant has not established, other than having significant stress, any additional circumstances that should be considered in a determination of whether to provide the Tenant with eviction relief. For these reasons, and given the on-going financial hardship endured by the Landlord as a result of this tenancy, it would be unfair to the Landlord to grant the Tenant with eviction relief.

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:**
 - \$10,951.62 if the payment is made on or before February 28, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$12,141.39 if the payment is made on or before March 4, 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 March 4, 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 March 4, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$8,674.30. 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 Tenant shall also pay the Landlord compensation of \$39.12 per day for the use of the unit starting February 3, 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 March 4, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 5, 2023 at 5.00% annually on the balance outstanding.
8. If the unit is not vacated on or before March 4, 2023, then starting March 5, 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 March 5, 2023.

February 21, 2023
Date Issued

Frank Ebner
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 5, 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 February 28, 2023

Rent Owing To February 28, 2023	\$10,765.62
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 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	\$10,951.62

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before March 4, 2023

Rent Owing To March 31, 2023	\$11,955.39
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 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	\$12,141.39

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

Rent Owing To Hearing Date	\$9,654.09
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	- \$1,147.00
Less the amount of the interest on the last month's rent deposit	- \$18.79
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	\$8,674.30
Plus daily compensation owing for each day of occupation starting February 3, 2023	\$39.12 (per day)