



Order under Section 78(6) Residential Tenancies Act, 2006

Citation: DMS Property Management Ltd. v Chaves, 2023 ONLTB 17383

Date: 2023-01-30

File Number: LTB-L-074546-22

2023 ONLTB 17383 (CanLII)

In the matter of: 23, 57 FOREST AVE
HAMILTON ON L8N1X3

Between: DMS Property Management Ltd. Landlord

And

Chantel Chaves Tenants
Joel Van Ameringen

On October 26, 2022, DMS Property Management Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Chantel Chaves and Joel Van Ameringen (the 'Tenants') because the Tenant did not meet a condition specified in the order issued by the LTB on July 12, 2022 with respect to application LTB-L-001544-22.

This application was decided without a hearing being held.

Determinations:

1. The order provides that the Landlord can apply to the LTB under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenants to terminate the tenancy and evict the Tenants if the Tenants do not meet certain condition(s) in the order LTB-L-001544-22. This application was filed within 30 days of the breach.
2. I find that the Tenants have not met the following conditions specified in the order:

**The Tenants failed to pay \$615.88 towards the arrears on or before October 1, 2022.
The Tenants also failed to pay the monthly rent in full, on or before October 1, 2022.**

3. The previous application includes a request for an order for the payment of arrears of rent and the order requires the Tenants to make payments by specific due dates. Accordingly, in addition to eviction, the Landlord is entitled to request an order for the payment of arrears owing.
4. The Tenants were required to pay \$12,390.56 for rent arrears, any NSF charges the Landlord incurred and the application filing fee in the previous order. The amount that is still owing from that order is \$12,390.56 and that amount is included in this order. This order replaces order LTB-L-001544-22.
5. Since the date of the previous order, the Tenants have failed to pay the full rent that became owing for the period from August 1, 2022 to October 31, 2022. The Landlord has also incurred NSF fees and administration fees in the amount of \$75.00 for cheques issued in August 2022, September 2022, and October 2022. The Landlord is entitled to reimbursement for these amounts.
6. The Landlord collected a rent deposit of \$1,521.00 from the Tenants and this deposit is still being held by the Landlord.
7. Interest on the rent deposit is owing to the Tenants for the period from October 1, 2021 to January 30, 2023.
8. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenants are required to pay.
9. The Landlord is entitled to daily compensation from the day after this order is issued to the date the Tenants move out of the unit at a daily rate of \$50.61. This amount is calculated as follows: $\$1,539.25 \times 12$, divided by 365 days.

It is ordered that:

1. Order LTB-L-001544-22 is cancelled.
2. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before February 10, 2023.
3. If the unit is not vacated on or before February 10, 2023, then starting February 11, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. 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 February 11, 2023.
5. The Tenants shall pay to the Landlord \$20,084.05*. This amount represents the rent owing up to January 30, 2023 and unpaid NSF charges, less the rent deposit and interest the Landlord owes on the rent deposit.
6. The Tenants shall also pay to the Landlord \$50.61 per day for compensation for the use of the unit starting January 31, 2023 to the date the Tenants move out of the unit.

7. If the Tenants do not pay the Landlord the full amount owing on or before February 10, 2023, the Tenants will start to owe interest. This will be a simple interest calculated from February 11, 2023 at 5.00% annually on the balance outstanding.

January 30, 2023

Date Issued

Kimberly Parish

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

The Tenants have until February 09, 2023 to file a motion with the LTB to set aside the order under s. 78(9) of the Act. If the Tenants file the motion by February 09, 2023 the order will be stayed and the LTB will schedule a hearing.

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 August 11, 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.

* Refer to the attached Summary of Calculations.

Summary of Calculations

Amount the Tenant must pay the Landlord:

Reason for amount owing	Period	Amount
Amount owing from previous order	Up to July 31, 2022	\$12,390.56
New Arrears	August 1, 2022 to January 30, 2023	\$9,163.94
New NSF cheque charges and related administration charges		\$75.00
Less the rent deposit:		-\$1,521.00
Less the interest owing on the rent deposit	October 1, 2021 to January 30, 2023	-\$24.45
Plus daily compensation owing for each day of occupation starting January 31, 2023	\$50.61 (per day)	
Total the Tenant must pay the Landlord:		\$20,084.05 +\$50.61 per day starting January 31, 2023

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