



Order under Section 69 Residential Tenancies Act, 2006

Citation: Spadafina v Danguedan, 2023 ONLTB 15843

Date: 2023-01-17

File Number: LTB-L-043313-22

In the matter of: 1, 1746A EGLINTON AVE W
TORONTO ON M6E2H6

Between: Maria Spadafina Landlord

And

Dante Danguedan, Erickson Supelana and
Evangeline Dino Tenants

Maria Spadafina (the 'Landlord') applied for an order to terminate the tenancy and evict Dante Danguedan, Erickson Supelana and Evangeline Dino (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe (L1 Application).

The Landlord also applied for an order to terminate the tenancy and evict the Tenants because the Tenants have wilfully or negligently caused damage to the premises; the Landlord also applied for an order requiring the Tenants to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenants (L2 Application).

This application was heard by videoconference on January 16, 2023.

The Landlord, the Landlord's Agent, Frank Spadafina, and the Landlord's Legal Representative, Sam Ursino, attended the hearing.

As of 10:07 a.m., 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:

L1 – Rent Arrears Application

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 \$1,340.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$44.05. This amount is calculated as follows: \$1,340.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to January 31, 2023 are \$13,440.00.
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 \$1,210.00 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 \$18.42 is owing to the Tenants for the period from December 1, 2020 to January 16, 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 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.

L2 – Negligent Damages Application

11. The Landlord served the Tenants with a valid notice on July 31, 2022, regarding wilful caused undue damages to the rental unit or residential complex. The Landlord also requested the out-of-pocket expenses that the Landlord had to pay in order to repair the damages caused by the Tenants.
12. On May 17, 2022, an occupant of the Tenants' rental unit attempted to break into another tenant's rental unit. The police were called and spoke to the Tenants about this incident. The damage to that tenant's door was \$109.53.
13. On June 4, 2022, the Tenants caused a water leak due to an overflow of the bathtub caused by an altercation in the Tenants' rental unit. Damage to the ceiling in the unit below the rental unit totalled \$1,971.85.
14. The Landlord's Legal Representative presented into evidence pictures of the damages and copies of the invoices that the Landlord paid to repair each incident.

15. The Tenants never attempted to pay for the damages that they were responsible for and these out-of-pocket costs are still owed to the Landlord. The Landlord's Legal Representative requested termination of the tenancy as a result of the wilful damages.
16. In accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), I canvassed the Landlord's Legal Representative whether there are any circumstances in this case that would cause me to consider granting relief from eviction pursuant to subsection 83(1) of the Act. The Landlord's Legal Representative was unaware of such circumstances, and I find that it would not be appropriate to grant relief. Therefore, this order is non-voidable.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before **January 28, 2023**.
2. The Tenants shall pay to the Landlord **\$11,762.38**. 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.
3. The Tenants shall also pay the Landlord compensation of **\$44.05** per day for the use of the unit starting January 17, 2023, until the date the Tenants move out of the unit.
4. The Tenants shall also pay the Landlord **\$2,081.38** for the damages
5. If the Tenants do not pay the Landlord the full amount owing on or before January 28, 2023, the Tenants will start to owe interest. This will be simple interest calculated from January 29, 2023 at 5.00% annually on the balance outstanding.
6. If the unit is not vacated on or before January 28, 2023, then starting January 29, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. 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 January 29, 2023.

January 17, 2023

Date Issued

Michael Di Salle

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 July 29, 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 as the tenancy is terminated

Rent Owing To Hearing Date	\$12,804.80
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,210.00
Less the amount of the interest on the last month's rent deposit	- \$18.42
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total amount owing to the Landlord	\$11,762.38
Plus daily compensation owing for each day of occupation starting January 17, 2023	\$44.05 (per day)