



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

Citation: 1213763/1319399 Ontario Inc v Lounder, 2023 ONLTB 14900

Date: 2023-01-11

File Number: LTB-L-025715-22

In the matter of: 702, 1541 LYCEE PL
OTTAWA ON K1G4E2

Between: 1213763/1319399 Ontario Inc Landlord

And

Janet Lounder Tenants
Marjorie Lounder

1213763/1319399 Ontario Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Janet Lounder and Marjorie Lounder (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on January 5, 2023. Only the Landlords legal representative, David Lyman, attended the hearing. As of 2:18pm, neither of the Tenants were present or represented 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 arrears of rent subject to this application are, in part, due to an Above Guideline Rent Increase (AGI) under Board file EAL-74410-18 which was issued on June 14, 2022. The AGI in the order spans over a period of 2 years which was first effective on increases of rent on or after September 1, 2018 (first effective date).
2. In the present case, I find that the Landlord served a notice of rent increase which an AGI which was to take effect on May 1, 2019. At the time, the Tenants were only obligated to pay the guideline rent amount which was 1.8% for 2019. However, after the Board issued the order in June of 2022, the Landlords were able to increase the rent above the guideline

by 2.8% in addition to the guideline starting May 1, 2019. The notice of rent increase indicated a lesser amount than the 2.8% and therefore the Landlords were only entitled to take the lesser amount which was \$1,293.96 starting May 1, 2019.

3. The Landlord served a subsequent notice of rent increase that was to take effect on May 1, 2020 and this notice also indicated that the Landlord had applied for an AGI and that the rent increase would be the guideline of 2.2% plus an AGI. The notice of rent increase indicated a lesser amount than the .1% and therefore the Landlords were only entitled to take the lesser amount which was an increase to \$1,323.72 starting May 1, 2020.
4. The AGI order also provided that the Landlord agreed to give rent abatements to each affected tenant equal to half of the tenants above guideline increase taken from the effective date of each tenants notice of rent increase until May 31, 2022. In the present case, the Landlord had agreed to give rent abatements equal to half of the AGI amounts from May 1, 2019 through May 31, 2022.
5. The AGI order also provided that the Tenant had 120 days from the date the order was issued in order to reconcile their rent accounts with the Landlord. In this regard, the Tenants should have reconciled their accounts by October 12, 2022 and paid the difference in the increased rent.
6. Inclusive of the abated rent and adjustments, as of October 12, 2022 the Tenants owed \$765.59 in additional rent with regards to the AGI order and as of November 1, 2022 the rent became \$1,339.60 pursuant to a notice of rent increase that the Landlord served with an effective date of May 1, 2022.
7. Due to the timing of the Landlords application for the AGI and the time when the N4 notice was served, the rent amounts did not list the AGI amounts on the notice, however, since the AGI order was not issued until after the N4 notice was served, I find that the N4 notice is still accurate based on the rent charged prior to the AGI being approved by the Board.
8. Accordingly, I find that 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.
9. As of the hearing date, the Tenants were still in possession of the rental unit.
10. The lawful rent as of November 1, 2022 is \$1,339.60. It is due on the 1st day of each month.
11. Based on the Monthly rent, the daily rent/compensation is \$44.04. This amount is calculated as follows: $\$1,339.60 \times 12$, divided by 365 days.
12. The Tenants have paid \$2,527.46 to the Landlord since the application was filed.
13. The rent arrears owing to January 31, 2023 are \$10,861.78 plus the \$765.59 AGI reconciliation amount for a total of \$11,627.37.

14. The Landlord is entitled to \$20.00 to reimburse the Landlord for administration charges and \$0.00 for bank fees the Landlord incurred as a result of 1 cheque given by or on behalf of the Tenants which was returned NSF for February of 2022.
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 \$1,262.95 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.
17. Interest on the rent deposit, in the amount of \$21.63 is owing to the Tenants for the period from May 1, 2022 to January 5, 2023.
18. It was the Landlords evidence that they had tried reaching out to the Tenants several times regarding trying to negotiate a payment plan. The Landlord tried prior to the service of the N4 notice and also when the N4 notice was served, and the Tenants did not reach out to the Landlord and then stopped paying rent altogether after the Landlord initiated the legal proceedings. According to the evidence filed by the Landlord, the Tenants have not made any payments since July 1, 2022.
19. The Tenants did not attend the hearing to dispute the Landlords application or to provide the Board with any submissions regarding their personal circumstances to consider whether relief would be appropriate under the circumstances.
20. 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.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$11,833.37 if the payment is made on or before January 22, 2023. See Schedule 1 for the calculation of the amount owing.
3. 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 January 22, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **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 January 22, 2023**

5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$9,403.75. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$44.04 per day for the use of the unit starting January 6, 2023 until 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 January 22, 2023, the Tenants will start to owe interest. This will be simple interest calculated from January 23, 2023 at 5.00% annually on the balance outstanding.
8. The Landlord or the Tenants 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 January 22, 2023, then starting January 23, 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 January 23, 2023.

January 11, 2023

Date Issued

Terri van Huisstede
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 23, 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.

*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

**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 January 22, 2023

Rent Owing To January 31, 2023	\$14,154.83
Application Filing Fee	\$186.00
NSF Charges	\$20.00

Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,527.46
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	\$11,833.37

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

Rent Owing To Hearing Date	\$13,009.79
Application Filing Fee	\$186.00
NSF Charges	\$20.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,527.46
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	- \$1,262.95
Less the amount of the interest on the last month's rent deposit	- \$21.63
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	\$9,403.75
Plus daily compensation owing for each day of occupation starting January 6, 2023	\$44.04 (per day)