



Order under Section 69 Residential Tenancies Act, 2006

Citation: Nicolini v March, 2022 ONLTB 14539

Date: 2022-12-22

File Number: LTB-L-037728-22

In the matter of: 27 KETTLEWELL CRES
BRAMPTON ON L6R0T2

Between: Francesco (Frank) Fiore and Mary Nicolini Landlords

And

Jerome March, Marvin M March and Morland March Tenants

Francesco (Frank) Fiore and Mary Nicolini (the 'Landlord') applied for an order to terminate the tenancy and evict Jerome March, Marvin M March and Morland March (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on December 13, 2022. Only the Landlords and the Landlord's Legal Representative, Carole Sayers, attended the hearing.

As of 3:57 p.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. Although there appears to have been some pictures submitted by the Tenants on December 13, 2022, as the Tenants did not attend the hearing to present their side, this evidence has not been considered.

Determinations:

Preliminary Issues:

1. The member raised that the N4 on record was confusing and questioned whether it met the court's ruling in *Ball v. Metro Capital Property*, [2002] O.J. No. 5931, that the Tenant knew the case to be met. The Representative explained that the Tenant was served an original N4 with a lower amount, then was served a second N4 with the correct amount of \$11,986.00 owing in arrears of rent to June 30, 2022. The Tenant was served the second notice with a letter saying to ignore the first N4; this letter and notice were served via courier on June 14, 2022 on received the same day. The L1 application is based on this second notice, but the original N4 was unable to be removed from the portal once it had been incorrectly uploaded.
2. It was also raised that there was no L1/9 update sheet on the file. The Landlord's Legal Representative explained that she had been having problems with the portal/her computer

and was not aware until today that the Board had not received it; it was submitted on September 1, 2022 and sent to the Tenant the same day. When the member mentioned to the Landlord that there was no update on file, the Landlord rushed to do up another form prior to knowing one had already been done. Unfortunately, the Landlord submitted an incorrectly calculated update form prior to re-submitting the original form; the Landlord could not remove the incorrect update from the portal. The correct update, completed by the Landlord's Legal Representative on December 1, 2022, shows that nothing has been paid since the application was filed and the total arrears to December 31, 2022 are \$28,786.00 plus the \$186.00 application filing fee.

3. Based on the uncontested submissions and evidence the matter proceeded on its matter and the L1/9 update dated December 1, 2022 was accepted.

Merits

4. The Landlord served the Tenant with a valid Notice to End 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.
5. As of the hearing date, the Tenant was still in possession of the rental unit.
6. The lawful rent is \$2,800.00. It is due on the 1st day of each month.
7. Based on the Monthly rent, the daily rent/compensation is \$92.05. This amount is calculated as follows: \$2,800.00 x 12, divided by 365 days.
8. The Tenant has not made any payments since the application was filed.
9. The rent arrears owing to December 31, 2022 are \$28,786.00.
10. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. The Landlord collected a rent deposit of \$2,800.00 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.
12. Interest on the rent deposit, in the amount of \$107.63 is owing to the Tenant for the period from August 1, 2019 to December 13, 2022.
13. The Landlords testified that they reached out to try and make arrangements for payment, but to no avail. the Tenant are three brothers; Morland and Jerome have since moved out and Marvin refuses to communicate or pay. The situation has become quite volatile including the Landlords being banned from entry.
14. 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. The Tenants did not attend the hearing and have not made any effort to make payments to the Landlord.

It is ordered that:

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**
 - \$28,972.00 if the payment is made on or before December 31, 2022. See Schedule 1 for the calculation of the amount owing.

OR

 - \$31,772.00 if the payment is made on or before January 3, 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 3, 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 3, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$24,461.02. 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 Landlords 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 Landlords compensation of \$92.05 per day for the use of the unit starting December 14, 2022, 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 2, 2023, the Tenants will start to owe interest. This will be simple interest calculated from January 3, 2023 at 5.00% annually on the balance outstanding.
8. The Landlords 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 3, 2023, then starting January 4, 2023, the Landlords 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 4, 2023.

December 22, 2022**Date Issued**

 Diane Wade

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 4, 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 December 31, 2022

Rent Owing To December 31, 2022	\$28,786.00
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	\$28,972.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before January 3, 2023

Rent Owing To January 31, 2023	\$31,586.00
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	\$31,772.00

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

Rent Owing To Hearing Date	\$27,182.65
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	- \$2,800.00
Less the amount of the interest on the last month's rent deposit	- \$107.63
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	\$24,461.02
Plus daily compensation owing for each day of occupation starting December 14, 2022	\$92.05 (per day)