



Order under Section 69 Residential Tenancies Act, 2006

Citation: Martins v Tavares, 2022 ONLTB 9086

Date: 2022-12-22

File Number: LTB-L-000629-22

In the matter of: Basement Unit, 77 YPRES RD
TORONTO ON M6M1P2

Between: Bruno A Martins Landlord

And

Issac Joel Andrade Tavares Tenants
Monica Carina Medeiros Garcia

Bruno A Martins (the 'Landlord') applied for an order to terminate the tenancy and evict Issac Joel Andrade Tavares and Monica Carina Medeiros Garcia (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on September 7, 2022.

The Landlord, the Landlord's Legal Representative R. Mahavalirajan, and the Tenant Monica Carina Medeiros Garcia attended the hearing. The Tenant spoke with Tenant Duty Counsel prior to the hearing. Landlord's witnesses Jessica Lopes and Marcus Sagrilio joined the call at 10:57 a.m.

Determinations:

L2 Application

1. At the hearing, the Landlord requested the consent of the Board to withdraw this application for persistently late payment.
2. In accordance with subsection 200(4) of the *Residential Tenancies Act, 2006*, I consent to the withdrawal of this application.

L1 Application

3. 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.
4. As of the hearing date, the Tenants were still in possession of the rental unit.
5. The lawful rent is \$1,600.00. It is due on the 1st day of each month.

6. Based on the Monthly rent, the daily rent/compensation is \$52.60. This amount is calculated as follows: \$1,600.00 x 12, divided by 365 days.
7. The Tenants have not made any payments since the application was filed.
8. The rent arrears owing to September 30, 2022 are \$20,800.00.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. There is no last month's rent deposit.
11. The rental unit, occupied by the named Tenants, is the basement of a house (the rental complex). The lawful monthly rent for the basement unit is \$1,600.00.
12. The main floor tenants are Marcus Sagrilio (MS), his son Wesley, and Wesley's girlfriend Jessica Lopes. The lawful monthly rent for the rental complex is \$2,500.00.
13. The Tenant testified that her boyfriend (Mr Tavares) paid rent to Wesley.
14. The Landlord's evidence is that the \$1,600.00 paid by the Tenants was collected by Wesley and was part of the \$2,500.00 monthly rent for the rental complex paid to the Landlord. The Landlord was aware of this arrangement and that MS acted as his agent to collect the rent. His evidence was that he was the sole beneficiary of the rent paid by the Tenants.

The Landlord's Evidence

15. The Landlord testified that MS came to him in the latter part of 2021 and explained that he had not been receiving rent from the Tenants. Both MS and the Landlord spoke with the Tenants. The Landlord testified that he had reached no payment agreements with the Tenants. Rather, the Tenants repeatedly told him that they would leave, but did not do so, nor did they pay any rent to him or to MS through Wesley.
16. Jessica Lopes testified that none of the occupants of the main floor received any money from the downstairs Tenants after August of 2021.
17. The Landlord's Legal Representative confirmed that after he served the applications on the Tenants on December 15, 2021, he attempted to contact them multiple times by phone as he did not have an email address for them, but that none of his calls were picked up.

The Tenant's Evidence

18. The Tenant testified that they had been paying rent (although sometimes late) and that her boyfriend had "an arrangement" with Wesley and the Landlord regarding the payment of rent but that she did not know what it was.
19. The Tenant testified that after one payment to Wesley by e-transfer, he requested to be paid in cash going forward, which is what her boyfriend did.
20. When asked if she could provide any evidence by way of bank statements to support the claim that the payments were made, the Tenant said that she "thought" that the bank had closed her account because she had not used it in some time and therefore she could not

access any bank statements. She testified, however, that she had used the account “a few months” before the hearing.

21. When asked which account she had been making the recent payments from, she claimed that it was actually her boyfriend that was making payments from his bank, and therefore she was unable to provide evidence of any withdrawals.
22. She agreed that she and her boyfriend had told the Landlord that they would leave, but that they didn't because they hadn't found a new rental unit. She stated, “I want to move out.”
23. I prefer the evidence of the Landlord to that of the Tenant for several reasons.
24. The Tenant made vague assertions that the other Tenant (who was not present to testify) had some “arrangement” with the Landlord and/or Wesley about payments but was unable to provide any details. While the Tenant claimed that she paid the rent by cash, she couldn't retrieve bank documentation to support the claim. She then stated that it was actually her boyfriend's bank account that had been used, but again was unable to provide any documents to support her claim.
25. I received viva voce testimony of both the Landlord and of tenants from the upstairs unit with respect to the cash payments that the Tenant claims to have made. They stated that no payments were received, and that there had never been a request to be paid in cash, as e-transfers provided a paper trail of payments made. Both the Landlord and Jessica Lopes denied that there was any “arrangement” regarding rent.
26. 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.
27. The Tenant testified that she has a 5-year-old child with special needs and would need a month or two to vacate the rental unit.
28. Between the date of the hearing and the enforcement date of this order, the Tenants have been provided with four months to find other accommodations.

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:**
 - \$25,786.00 if the payment is made on or before December 31, 2022. See Schedule 1 for the calculation of the amount owing.

OR

- \$27,386.00 if the payment is made on or before January 6, 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 6, 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 6, 2023.**
 5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$19,754.20. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
 6. The Tenants shall also pay the Landlord compensation of \$52.60 per day for the use of the unit starting September 8, 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 6, 2023, the Tenants will start to owe interest. This will be simple interest calculated from January 7, 2023 at 5.00% annually on the balance outstanding.
 8. If the unit is not vacated on or before January 6, 2023, then starting January 7, 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 January 7, 2023.

2022 ONLTB 9086 (CanLI)

December 22, 2022
Date Issued

Margo den Haan
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 7, 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	\$25,600.00
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
Total the Tenants must pay to continue the tenancy	\$25,786.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before January 6, 2023

Rent Owing To January 31, 2026	\$27,200.00
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
Total the Tenants must pay to continue the tenancy	\$27,386.00

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

Rent Owing To Hearing Date	\$19,568.20
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	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
Total amount owing to the Landlord	\$19,754.20
Plus daily compensation owing for each day of occupation starting September 8, 2022	\$52.60 (per day)

