



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

Citation: AMSTAR POOL I LP v Bolton, 2022 ONLTB 13957

Date: 2022-12-07

File Number: LTB-L-014996-22

In the matter of: 507, 5600 SHEPPARD AVE E
SCARBOROUGH ON M1B2L4

Between: AMSTAR POOL I LP Landlord

And

Aloha Arcilla Tenants
Nicholas Bolton

AMSTAR POOL I LP (the 'Landlord') applied for an order to terminate the tenancy and evict Aloha Arcilla and Nicholas Bolton (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on September 27, 2022 at 10:57 a.m.

The Landlord's representative Kevin Anderson licensed paralegal and the Tenant Nicholas Bolton attended the hearing.

Determinations:

1. 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.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$1,474.96. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$48.49. This amount is calculated as follows: \$1,474.96 x 12, divided by 365 days.
5. The Tenants have made \$1,100.00 in payments since the application was filed.
6. The rent arrears owing to September 30, 2022 are \$12,037.16.
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 \$1,411.15 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.

Relief from Eviction

9. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
10. The Tenant testified his son passed away unexpectedly on January 20, 2020 causing his wife to fall into depression and to temporarily be unable to work. His wife was not able to return to work until September 2022 and since then, as a single income earner, there was a lot of pressure on him to earn income for the household.
11. The Tenant testified he contracted COVID-19 twice. He works as a machine operator and was off work from March 2020 to August 2020, returning to work August 5, 2020. In December 2020, he contracted COVID-19 again and was off work from December 2020 to February 2021, returning to work February 15, 2021. However, he returned to inconsistent hours as he battled ongoing effects of the illness and intermittent available hours provided by his employer. In addition, the Tenant testified he was on strike from January 2022 to March 2022 earning minimal income and coupled with the fact his wife was still unable to work due to her depression, this caused the Tenants to fall into significant arrears.
12. The Tenant testified that since April 2022, he has worked consistently earning \$2,800.00 per month and his wife began a new job in September 2022 earning approximately \$2,000.00 per month for a total approximate monthly household income of \$4,800.00. The Tenant estimated that inclusive of rent, his total monthly household expenses are approximately \$3,500.00 and proposed a payment plan for \$300.00 per month for 41 months to repay the arrears. In the alternative, should they be evicted, they need additional time to find affordable housing.
13. The Tenant further testified he and his wife have two children, 13 and 17 years old, and an eviction would be traumatic to them and explained finding a suitable affordable unit in the neighbourhood would be challenging given their family's current proximity to school and work, particularly his wife's new position at the Salvation Army which is close by.
14. The Landlord's representative testified that while he understands the circumstances of the Tenant, the proposed repayment plan of approximately 3.5 years would be prejudicial to the Landlord given the significant amount of arrears outstanding.
15. Further, the Landlord's representative commented that should the Tenant's stated household income and expenses be correct, there is no reason why the Tenant could not afford more than \$300.00 per month seeing the Tenant testified he has approximately \$1,300.00 in disposable household monthly income; therefore, due to these circumstances still sought a standard order.
16. I have reviewed the evidence weighing the evidence of both parties and considered all the circumstances and I am persuaded that the Tenant has gone through very difficult circumstances with respect to both illness and death in the family which impacted the Tenants' ability to pay the lawful monthly rent. Further, I am convinced through analysis of the Tenant current household employment situation that the Tenant now has stable and significant enough income to commit to a payment plan amounting to a reasonable proportion of the Tenant's disposable monthly income. I am persuaded that due to these

circumstances, the eviction should be denied subject to meeting the terms of a payment plan. Based on the Tenants' disclosed income, it seems reasonable to require them to pay \$400.00 per month towards their arrears in addition to pay their ongoing rent.

It is ordered that:

1. The Tenants shall pay to the Landlord \$12,037.16 for arrears of rent up to September 30, 2022 and \$186.00 for costs of filing the application for a total of \$12,223.16.
2. The Tenants shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:
 - \$400.00 per month, each month, for 30 consecutive months, on or before the 15th day of each of the month for the period January 15, 2023 to June 15, 2025;
 - A final payment of \$223.16 will be made on or before July 15, 2025.
3. The Tenants shall pay the rent for the months of October 2022 to December 22, by January 15, 2023 in the event they have not already made these payments.
4. The Tenants shall also pay to the Landlord new rent on time and in full as it comes due and owing for the period January 1, 2022 to July 1, 2025 or until the arrears are paid in full, whichever date is earliest.
5. If the Tenants fail to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenants to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenants, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenants pay any new arrears, NSF fees and related charges that became owing after September 27, 2022.

December 7, 2022
Date Issued

 Greg Witt
 Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.