



Order under Section 69 Residential Tenancies Act, 2006

Citation: Riocan Real Estate Investments Partnership Ten LP v Kelly, 2022 ONLTB 13179

Date: 2022-12-01

File Number: LTB-L-022478-22

In the matter of: 1805, 15 ROEHAMPTON AVE
TORONTO ON M4P0C2

Between: Riocan Real Estate Investments Partnership Landlord
Ten LP

And

Adrian Kelly, Shanice Hylton-Williams Tenant

Riocan Real Estate Investments Partnership Ten LP (the 'Landlord') applied for an order to terminate the tenancy and evict Adrian Kelly, Shanice Hylton-Williams (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 8, 2022.

The Landlord's legal representative, Bryan Rubin, and the one of the Tenants, attended the hearing.

For the ease of reference for this order the Tenants will be referred to as Adrian Kelly (AK) and Shanice Hylton-Williams (SHW)

Determinations:

1. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$2,212.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$72.72. This amount is calculated as follows: \$2,212.00 x 12, divided by 365 days.
5. The Tenant has paid \$2,177.00 to the Landlord since the application was filed.
6. The rent arrears owing to November 30, 2022 are \$25,650.35.
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 \$2,212.00 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.
9. Interest on the rent deposit, in the amount of \$34.62 is owing to the Tenant for the period from July 21, 2021 to November 8, 2022.

RELIEF FROM EVICTION

10. The position of the Tenants is that they don't dispute arrears in the amount of \$23,438.35 and the difference in dispute is a one month free rent incentive the Tenants' say they never received. The Tenants also submit that that shortly after they moved into the rental unit AK was involved in an accident and was unable to work. There have been multiple deaths in the family the Tenants are dealing with. The Tenants have a three year old child that lives with the Tenants. The Tenants offered a repayment plan of \$500.00 per month, then later made a submission that they are getting an insurance settlement from AK's accident and can pay the arrears in full but would require until December 31, 2022 to receive the money from the insurance.
11. The position of the Landlord is that the arrears the Tenants owe are significant and the Tenants have made little payment since filing the application with the Board. The Landlord disputes the one month free rent incentive and submitted the Tenants immediately went into arrears at the beginning of the tenancy and the one month free incentive was void due to the Tenants arrears. The Landlord has made numerous attempts at communication with the Tenants, with little response from the Tenants. The Landlord has received two small payments since the application was filed and the arrears continue to accrue. The Landlord is seeking a standard order for eviction and arrears.
12. The Tenants claim for an insurance settlement was not supported with any evidence provided to the Board. I do not find the Tenants evidence persuasive enough, relying solely on their oral testimony with respect to the insurance settlement they claim they will be receiving. The Tenants' lack of particulars and specific details regarding the insurance payout are such that I am not satisfied the Tenants have met that burden of proof to support their claim, and therefore I did not consider it as a repayment plan on behalf of the Tenants. Given the quantum of the arrears, and weighing the prejudice to the Landlord on a long delay order for eviction that would only add to the amount the Tenants would owe, against the Tenants circumstances including the Tenants' young child living with them, I am granting the Landlord's request for eviction, however I find it not unreasonable to allow the Tenants time to arrange their finances, or find a more suitable place to live, and thereby grant a delay of eviction.
13. 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 postpone the eviction until January 15, 2023 pursuant to subsection 83(1)(b) of the Act.

14. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
15. This order contains all reasons for the determinations and order made. No further reasons will be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:
 - \$28,048.35 if the payment is made on or before December 31, 2022. See Schedule 1 for the calculation of the amount owing.
- OR
- \$30,260.35 if the payment is made on or before January 15, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after January 15, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before January 15, 2023
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$21,959.49. 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.
6. The Tenant shall also pay the Landlord compensation of \$72.72 per day for the use of the unit starting November 9, 2022 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before December 12, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 13, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before January 15, 2023, then starting January 16, 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 16, 2023.

December 1, 2022
Date Issued

Greg Brocanier
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 16, 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 December 31, 2022

Rent Owing To December 31, 2022	\$30,039.35
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,177.00
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	- \$
Total the Tenant must pay to continue the tenancy	\$28,048.35

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before January 15, 2023

Rent Owing To January 31, 2023	\$32,251.35
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,177.00
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	\$30,260.35

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

Rent Owing To Hearing Date	\$26,197.11
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,177.00
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	- \$2,212.00
Less the amount of the interest on the last month's rent deposit	- \$34.62
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	- \$
Total amount owing to the Landlord	\$21,959.49
Plus daily compensation owing for each day of occupation starting November 9, 2022	\$72.72 (per day)