



Order under Section 69 Residential Tenancies Act, 2006

Citation: Benstar (No.3) Limited Partnership v Fitzgerald, 2022 ONLTB 12940

Date: 2022-11-30

File Number: LTB-L-020955-22

In the matter of: 2073-218, 2051 PROSPECT ST
BURLINGTON ON L7R1Z3

Between: Benstar (No.3) Limited Partnership Landlord

And

Amie Fitzgerald Tenant

Benstar (No.3) Limited Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Amie Fitzgerald (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 27, 2022.

Only the Landlord's legal representative, Frank Calcagni, attended the hearing.

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 \$2,469.28. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$81.18. This amount is calculated as follows: \$2,469.28 x 12, divided by 365 days.
5. The Tenant has paid \$1,200.00 to the Landlord since the application was filed.
6. The rent arrears owing to October 31, 2022 are \$17,178.56.
7. The Landlord is entitled to \$20.00 to reimburse the Landlord for administration charges and \$5.00 for bank fees the Landlord incurred as a result of 1 cheque given by or on behalf of the Tenant which was returned NSF.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

9. The Landlord collected a rent deposit of \$2,440.00 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.
10. Interest on the rent deposit, in the amount of \$24.07 is owing to the Tenant for the period from January 1, 2022 to October 27, 2022.
11. 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, including submissions from the Landlord's legal representative that the Tenant does not have young children or any persons with special needs that the Board needs to consider living with them, 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.
12. 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.
13. 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:
 - \$19,858.84 if the payment is made on or before November 30, 2022. See Schedule 1 for the calculation of the amount owing.OR
 - \$22,328.12 if the payment is made on or before December 11, 2022. 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 December 11, 2022 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 December 11, 2022
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$14,648.07. 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 Tenant. See Schedule 1 for the calculation of the amount owing.

6. The Tenant shall also pay the Landlord compensation of \$80.22 per day for the use of the unit starting October 28, 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 11, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 12, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 11, 2022, then starting December 12, 2022, 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 December 12, 2022.

2022 ONLTB 12940 (CanLII)

November 30, 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 June 12, 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 November 30, 2022

Rent Owing To November 30, 2022	\$20,847.84
Application Filing Fee	\$186.00
NSF Charges	\$25.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,200.00
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	\$19,858.84

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 11, 2022

Rent Owing To December 31, 2022	\$23,317.12
Application Filing Fee	\$186.00
NSF Charges	\$25.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,200.00
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	\$22,328.12

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

Rent Owing To Hearing Date	\$18,101.14
Application Filing Fee	\$186.00
NSF Charges	\$25.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,200.00
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	- \$2,440.00
Less the amount of the interest on the last month's rent deposit	- \$24.07
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	\$14,648.07
Plus daily compensation owing for each day of occupation starting October 28, 2022	\$80.22 (per day)