



*S. Sciulli*

## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Akelius Canada Ltd. v King, 2022 ONLTB 12866

**Date:** 2022-11-28

**File Number:** LTB-L-015341-22

**In the matter of:** 1506, 730 ST CLARENS AVE  
TORONTO ON M6H4E8

**Between:** Akelius Canada Ltd. Landlord

**And**

Daniel King, Isabel Meira Tenants

Akelius Canada Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Daniel King, Isabel Meira (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on September 28, 2022.

The Landlord Representative, Sabrina Sciulli, Landlord Agent, Maya Mangilit and the second-named Tenant attended the hearing.

### Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before December 31, 2022.

#### Preliminary Issues

2. The Tenants raised a preliminary issue that they paid rent in advance for 12 months for the period of January 2021 to January 2022.
3. It is the Tenants' position that the amount of rent unpaid in the N4 Notice to End Tenancy Early for Non-payment of Rent (N4 Notice) is incorrect since it shows rent unpaid for November 2021 to January 2022.
4. The Tenant said that she paid the rent for the months of November 2021 to January 2022 in advance when she moved into the rental unit. Therefore, the N4 notice is defective, and the Landlord's application must be dismissed.
5. The Tenant testified that she moved into the rental unit in December 2020.
6. The Landlord argued that the Tenants paid for a total of 10 months plus last month rent deposit totaling \$21,230.00. The Landlord further submitted that the Tenant had received

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ledgers showing the amount of unpaid rent and that the Tenant had not submitted any evidence prior to the hearing showing that the Tenant disputes the amount of unpaid rent.

7. The monthly rent at that time was \$1,929.00 which included parking fees of \$80.00.
8. The Tenant did not dispute the monthly rent of \$1,929.00. Based on the testimony of the parties, I am satisfied that the Tenant paid 10 month's rent of \$21,230.00 plus last month rent deposit. This would mean that the Tenant had paid until October 2021. Therefore, the amount unpaid as shown on the N4 for the month of November 2021 is valid.

#### Lawful monthly rent

9. The Landlord made an error on the application stating that the lawful monthly rent is \$1871.18. However, on the L1/L9 Information update sheet the Landlord claims that the lawful monthly rent is \$1952.14. At the hearing, the Landlord Representative submitted that the lawful rent increased on January 1, 2022, to \$1952.14 and includes parking fees of \$80.96. The Tenant did not dispute the amount of monthly rent. Landlord Representative sought consent of the Board to amend the application. I consented to the amendment pursuant to s. 200 (1) of the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 ('the Act').

#### Adjournment Request

10. The Tenant requested an adjournment on the following grounds:
  - She has had a concussion and she is confused
  - Daniel King, the other Tenant is a witness and is not present
  - She has Section 82 issues with mold and water leaks
  - Would like to hire legal counsel
11. I reminded the Tenant that she was sent the Notice of Hearing and the documents pertaining to the Landlord's application on September 8, 2022 and nothing was returned undelivered to the Board. I asked the Tenant whether she had submitted an adjournment request and Section 82 issues prior to the hearing. The Tenant replied that she has been busy and did not get the time to do this.
12. The Tenant also said that she is confused and wants legal help. I asked the Tenant whether she sought legal help prior to the hearing. The Tenant said that there were issues with her phone and only had internet. I told the Tenant that under s. 10 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, the right to representation is not absolute and that she had adequate time to hire legal representation.
13. I asked the Tenant why Daniel King, the first-named Tenant is not present at the hearing. The Tenant replied that he could not take the day off from work to attend the hearing. I asked the Tenant if Mr. King has submitted anything to the Board requesting an adjournment and that he would not be present. The Tenant said that no adjournment request was submitted by Mr. King. There is no record of a request to reschedule filed by the first-named Tenant.

14. According to the Board's Interpretation Guideline 1 on Adjourning and Rescheduling Hearings:

Where the respondent fails to appear, a notice of hearing has been sent to the parties and the matter has not been adjourned or rescheduled, the Member will proceed with the hearing, and will make a decision based on the evidence provided by the applicant at the hearing.

15. Both Tenants were sent a Notice of Hearing and the matter was not adjourned or rescheduled before the hearing.
16. Based on the fact that the neither the Tenant nor the first-named Tenant had submitted an adjournment request or Section 82 issues, that the right to representation is not absolute, I denied the adjournment request and proceeded with the hearing.

#### N4 Notice

17. The Landlord served the Tenants with a valid 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.
18. As of the hearing date, the Tenants were still in possession of the rental unit.
19. The lawful rent is \$1,952.14. It is due on the 1st day of each month.
20. Based on the Monthly rent, the daily rent/compensation is \$64.18. This amount is calculated as follows:  $\$1,952.14 \times 12$ , divided by 365 days.
21. The Tenants have not made any payments since the application was filed.
22. The rent arrears owing to September 30, 2022, are \$20,596.60
23. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
24. The Landlord collected a rent deposit of \$1,849.00 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.
25. Interest on the rent deposit, in the amount of \$16.48 is owing to the Tenants for the period from January 2, 2021, to September 28, 2022.
26. The Landlord attempted to negotiate a payment plan through written communication.

#### Relief from eviction

27. The Tenant said that she is ready to pay the rent going forward.
28. The Tenant said that she just started receiving the EI payments and that the first-named Tenant started working recently which is why they haven't been able to pay the rent.
29. The Tenant said that the first-named Tenant helps with paying a portion of the rent. I have previously determined that the first-named Tenant had been properly served with the

Notice of Hearing and there was no record of a request to reschedule the hearing. In the absence of the first-named Tenant, I based my decision on the income and expenses provided by the Tenant.

30. The Tenant said that she will receive some money from maternity leave but does not know the amount. Her monthly income is \$891 excluding any other amounts.
31. The Tenant said that she could pay \$200 per month towards the arrears of rent.
32. The Tenant has three children all under 9 years of age.
33. The Landlord Representative submitted that the Landlord is a corporate entity, but the Landlord is not receiving rent and this ultimately affects the overall operation of the entity such that it affects the ability of the Landlord to pay salaries to its employees. The Landlord Representative also said that the Tenant's request for a payment plan of \$200 per month towards arrears of rent would place a higher burden on the Landlord specially when the arrears are as high as \$20,596.60.
34. The Landlord requested a delayed eviction date of November 30, 2022. The Tenant said that she could vacate the unit by December 31, 2022.
35. 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 postpone the eviction until December 31, 2022, pursuant to subsection 83(1)(b) of the Act.

**It is ordered that:**

36. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
37. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$24,686.88 if the payment is made on or before November 30, 2022. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$26,639.02 if the payment is made on or before December 31, 2022. See Schedule 1 for the calculation of the amount owing.
38. 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 December 31, 2022 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
39. **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 December 31, 2022.**
40. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$22,666.30. 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 Tenants. See Schedule 1 for the calculation of the amount owing.

41. The Tenants shall also pay the Landlord compensation of \$64.18 per day for the use of the unit starting September 29, 2022, until the date the Tenants moves out of the unit.
42. If the Tenants do not pay the Landlord the full amount owing on or before December 31, 2022, the Tenants will start to owe interest. This will be simple interest calculated from January 1, 2023, at 4.00% annually on the balance outstanding.
43. If the unit is not vacated on or before December 31, 2022, then starting January 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
44. 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 1, 2023.



**November 28, 2022**

**Date Issued**

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Supratip Mallick

Member, Landlord and Tenants 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 1, 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 November 30, 2022**

Rent Owing To November 30, 2022	\$24,500.88
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenants is entitled to	- \$0.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$24,686.88</b>

**B. 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	\$26,453.02
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenants is entitled to	- \$0.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$26,639.02</b>

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

Rent Owing To Hearing Date	\$24,345.78
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,849.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$16.48
<b>Less</b> the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00

<b>Less</b> the amount of the credit that the Tenants is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$22,666.30</b>
Plus daily compensation owing for each day of occupation starting September 29, 2022	\$64.18 (per day)