



Order under Section 69 Residential Tenancies Act, 2006

Citation: Wong Family Trust v Barbas, 2022 ONLTB 13211

Date: 2022-11-25

File Number: LTB-L-002559-22

In the matter of: 19 GARFIELD LANE
ST CATHARINES ON L2R7G9

Between: Wong Family Trust Landlord

And

Beryle Barbas Tenant

Wong Family Trust (the 'Landlord') applied for an order to terminate the tenancy and evict Beryle Barbas (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on July 19, 2022.

The Landlord's Legal Representative, S. Hedden and the Tenant attended the hearing.

C. Wong appeared as witness for the Landlord.

Determinations:

Preliminary Issue

1. The Tenant testified that she was not in possession of the rental unit at the time the application was filed. She testified that her sons remained in the rental unit.
2. The Testified that she notified the Landlord that she was vacating the unit by writing a note on June 19, 2021 indicating that she was vacating the unit as of August 31, 2021 with the assistance of the Landlord's wife. She also provided a copy of 1 page of a lease that was signed in December 2020.
3. The Landlord's wife, C. Wong testified that she did not assist the Tenant with writing a letter to vacate the unit as of August 31, 2021 and when shown a copy of the note, she denied even being aware of the note.
4. It is the Landlord's position that the Tenant was in possession of the rental unit at the time of filing this application as they never received keys back from the Tenant, nor did they ever receive any notice to vacate from the Tenant. Further, the Landlord submits that he had a conversation with the Tenant days before the hearing and the Tenant advised that she could not pay the arrears or the rent going forward.
5. Based on the evidence before me, I find that the Tenant was in possession of the unit at the time this application was filed. The document that the Tenant sent in that she submits

is a letter she gave to the Landlord on June 19, 2021 to vacate by August 31, 2021 does not seem to align with the lease the Tenant purports to have signed on December 1, 2020. It does not make sense to sign a lease in December 2020 for a start date of December 1, 2020, and then not give notice to terminate at this unit until June 19, 2021. The Landlord's representative had a conversation with the Tenant days before this hearing where the Tenant admitted to not being able to afford the rent or the arrears but did not put forward that she was no longer living in the unit. The Landlord never received the notice that the Tenant alleged to have given, the Landlord's witness denies ever seeing the notice to vacate that she allegedly assisted with and the Landlord never received keys back from the Tenant. The burden falls on the Tenant to prove that she was not in possession of the at the time this application was filed, and I find that she has not met that burden.

L1 Application

6. 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.
7. As of the hearing date, the Tenant was still in possession of the rental unit.
8. The lawful rent is \$1,300.00. It is due on the 1st day of each month.
9. Based on the Monthly rent, the daily rent/compensation is \$42.74. This amount is calculated as follows: $\$1,300.00 \times 12$, divided by 365 days.
10. The Tenant has not made any payments since the application was filed.
11. The rent arrears owing to July 31, 2022 are \$13,000.00.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
13. There is no last month's rent deposit.

Relief from Eviction

14. The Tenant testified that she isn't living in the unit. She testified that her sons are.
15. The Landlord is seeking a standard order.
16. I can only consider section 83 arguments put forward by the Tenant in order to either delay the eviction, or grant some other relief, such as a payment plan. The Tenant maintains that she is not living in the unit, so I find that it would be unfair in the circumstances to delay the eviction.
17. 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.

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:**
 - \$18,386.00 if the payment is made on or before November 30, 2022. See Schedule 1 for the calculation of the amount owing.

OR

 - \$19,686.00 if the payment is made on or before December 6, 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 6, 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 6, 2022**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$12,698.06. 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 Tenant shall also pay the Landlord compensation of \$42.74 per day for the use of the unit starting July 20, 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 6, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 7, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 6, 2022, then starting December 7, 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 7, 2022.

November 25, 2022
Date Issued

 Emily Robb
 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 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 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	\$18,200.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	\$18,386.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 6, 2022

Rent Owing To December 31, 2022	\$19,500.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	\$19,686.00

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

Rent Owing To Hearing Date	\$12,512.06
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	- \$
Less the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord	\$12,698.06
Plus daily compensation owing for each day of occupation starting July 20, 2022	\$42.74 (per day)