



Order under Section 69 Residential Tenancies Act, 2006

Citation: Krebs v Daley, 2022 ONLTB 12865

Date: 2022-11-23

File Number: LTB-L-015536-22

In the matter of: 312, 608 DAWES RD
TORONTO ON M4B 2G7

Between: Carolyn Krebs Landlord

And

Mike Daley Tenants
Robin Leah Izzard

Carolyn Krebs (the 'Landlord') applied for an order to terminate the tenancy and evict Mike Daley and Robin Leah Izzard (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 4:05 p.m.

The Landlord Carolyn Krebs and the Tenants Mike Daley and Robin Leah Izzard attended the hearing.

Preliminary Issue:

1. As a preliminary matter, the Tenants requested an adjournment of the proceedings citing a lack of time to prepare for the hearing, claiming the Tenants had not received disclosure until September 16, 2022. Taking in submissions from both parties at this hearing, I determined the adjournment was not to be granted. My reasons for denying this adjournment are as follows.
2. The Landlord objected to the adjournment due to the prejudice an adjournment would cause the Landlord as the arrears are sizable. The Landlord argued the Tenants had more than enough time to prepare for a hearing which was straightforward in nature and that all evidence had been disclosed in a package delivered to the Tenant's mailbox on September 11, 2022 which was 16 days before the hearing on August 27, 2022.
3. Section 183 of the *Residential Tenancies Act, 2006* (the 'Act') states that the Board shall adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter.
4. I find that the Tenants received adequate notice of the hearing. Both sides were present at the hearing and the Tenants had received the Landlord's evidence more than 7 days before the hearing in accordance with LTB Rule of Procedure 19. I am therefore satisfied

that the Tenants has an adequate opportunity to know the issues and be heard on the matter.

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 \$1,315.60. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$43.25. This amount is calculated as follows: \$1,315.60 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to September 30, 2022 are \$18,340.40.
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 \$1,315.60 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.
9. The interest owing on the rent deposit is \$19.72.

Relief from Eviction

10. The Tenants seek relief from eviction pursuant to s. 83(1) of the Residential Tenancies Act, 2006 (the 'Act') saying they can pay on time into the future and can repay the arrears over 61 periods; moreover, if they aren't granted relief seek a delay of 3 months due to their circumstances.
11. The Landlord opposes relief.
12. The test in section 83 of the Act for relief is whether or not in all the circumstances it would not be unfair to refuse eviction or grant some other form of relief. With respect to their circumstances the Tenant, Mike Daley, testified he lost his job working as a warehouse employee in a marijuana plant and was therefore unable to pay the lawful monthly rent. From April 2022 to August 2022, the Tenant was searching for work, until August 2022 when he got a new job as a shipper/receiver and safety compliance coordinator.
13. The Tenants further testified they now have adequate disposable income to successfully commit to a payment plan to repay the arrears while meeting their monthly rent obligations. The Tenants testified their income is \$3,500.00 per month and their expenses are \$2,615.00 per month (\$1,315.60 in rent + \$1,300.00 in other expenses such as children, phone, transportation, utilities, food and other costs) and proposed a repayment plan of

\$300.00 per month for 61 months to repay the arrears. For those reasons, the Tenant requested to deny or delay the eviction.

14. On cross-examination, the Landlord asked why the Tenants have not paid any rent since the application, and further, asked why the Tenants having just testified that they had been employed since August 2022 why they hadn't paid any rent since August. The Tenants responded that they did not know who to pay as they were unclear who the Landlord was as the Landlord uses her married name 'Krebs' and not her maiden name, 'Linton', the name they were more familiar with as this was name people use around the rental building. They also testified they did not know where to drop off the money.
15. The Landlord disputed the testimony from the Tenants as there is a superintendent in the building, in room 105, which is clearly marked. Moreover, the Landlord testified the Tenants had demonstrated they knew where to drop off the rent as they have done so prior to the Tenants accumulating arrears.
16. Given all of the above, it seems to me more likely than not that the Tenants will not be able to pay rent on time into the future. They did not pay any rent from the date of the application to the hearing date and did not pay August's rent despite testifying they were employed. As a result and having considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act I find that it would be unfair to deny the Landlord an eviction order and unfair to postpone the eviction pursuant to subsection 83(1)(b) of the Act.
17. The Tenants also stated the Landlord failed to discuss the terms of the repayment of arrears with the Tenant pursuant to s.83(6) of the Act. The Tenant stated as a result, the Board should refuse or delay the Landlord's application.
18. The Landlord testified she tried to arrange repayment plans and negotiate with the Tenants on multiple occasions and provided a detailed account of dates she or her agent had with the Tenants:
 - October 16, 2021 – negotiated to catch up on previous months rent.
 - April 2, 2022 - negotiated to pay \$2,800.00 by end of April.
 - May 16, 2022 – negotiated to pay all arrears by May 31, 2022
 - June 12, 2022 – negotiated to pay 3 months of rent.
 - July 1, 2022 – spoke with tenant about previous commitments.
 - August 17, 2022 - spoke with tenant about previous commitments.
 - September 11, 2022 – agent spoke with tenant about arrears.

Despite these attempts by the Landlord and her agent, the Tenant did not pay the lawful monthly rent or arrears.

19. I find the Landlord's testimony credible that they attempted to negotiate with the Tenants multiple times. The Landlord provided detailed evidence to support that she made several further attempts to negotiate a repayment plan of the arrears. As a result, I find the

Landlord fulfilled her duties to attempt resolution of the application pursuant to subsection 83(6) of the Act.

20. 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 Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$21,157.60 if the payment is made on or before November 30, 2022. See Schedule 1 for the calculation of the amount owing.

OR

 - \$22,473.20 if the payment is made on or before December 4, 2022. See Schedule 1 for the calculation of the amount owing.
3. 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 4, 2022 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **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 4, 2022**
5. If the Tenant does not void the order, the Tenants shall pay to the Landlord \$17,061.33. 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.
6. The Tenants shall also pay the Landlord compensation of \$43.25 per day for the use of the unit starting September 28, 2022 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before December 4, 2022, the Tenants will start to owe interest. This will be simple interest calculated from December 5, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 4, 2022, then starting December 5, 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 5, 2022.

November 23, 2022

Date Issued

Greg Witt

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 5, 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	\$20,971.60
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$21,157.60

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	\$22,287.20
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$22,473.20

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

Rent Owing To Hearing Date	\$18,210.65
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,315.60
Less the amount of the interest on the last month's rent deposit	- \$19.72
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00

Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total amount owing to the Landlord	\$17,061.33
Plus daily compensation owing for each day of occupation starting September 28, 2022	\$43.25 (per day)