



Order under Section 69 Residential Tenancies Act, 2006

Citation: De Villena v Kerr, 2022 ONLTB 12531

Date: 2022-11-23

File Number: LTB-L-017407-22

In the matter of: 1102 MOY AVE
WINDSOR ON N9A2P5

Between: Benjamin De Villena Landlord

And

Aubrey Kerr, Austen Kerr, Lukas Barker, Tenant
Stephanie Kerr

Benjamin De Villena (the 'Landlord') applied for an order to terminate the tenancy and evict Aubrey Kerr, Austen Kerr, Lukas Barker, Stephanie Kerr (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 11, 2022.

The Landlord and the Tenant 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 \$1,600.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$52.60. This amount is calculated as follows: \$1,600.00 x 12, divided by 365 days.
5. The Tenant has paid \$1,600.00 to the Landlord since the application was filed.
6. The rent arrears owing to October 31, 2022 are \$11,200.00.
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 \$1,700.00 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 \$14.76 is owing to the Tenant for the period from January 21, 2022 to October 11, 2022.

Relief from Eviction

10. The Tenant, S. Kerr testified that she had some employment issues involving sporadic hours and late pay cheques. She testified that new owners took over the place where she is employed, and those issues are now resolved.
11. The Tenants suggested a payment plan that would see the arrears paid off in 16 months by paying \$700.00 on the 20th day of every month.
12. The Landlord is seeking a standard order. The Landlord submits that to allow a 16 or 17 month payment plan is prejudicial to the Landlords as they have a mortgage that they are responsible for on this property and the \$700.00 a month does not adequately address the arrears.
13. Based on the evidence before me, I do not find that the payment plan that the Tenants have suggested is reasonable or affordable in the circumstances. The Tenants testimony regarding their income versus expenses demonstrates that the \$700.00 payment that they have suggested is not affordable. They have approximately \$400.00 leftover every month after paying their monthly rent and other expenses. This does not cover the amount they have suggest paying towards the arrears. The Tenants testified that they would be willing to make sacrifices to come up with the short fall, however I do not find that it is fair in the circumstances, given the quantum of the arrears and the short length of this tenancy to order a payment plan that is dependant on the Tenant's willingness to make sacrifices. I note that there have been no payments to the Landlord since May 10, 2022.
14. 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:**
 - \$12,986.00 if the payment is made on or before November 30, 2022. See Schedule 1 for the calculation of the amount owing.

OR

 - \$14,586.00 if the payment is made on or before December 4, 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 4, 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 4, 2022**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$8,649.84. 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 \$52.60 per day for the use of the unit starting October 12, 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 4, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 5, 2022 at 2.00% 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
Issued

Date
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 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 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	\$14,400.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,600.00
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	\$12,986.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 4, 2022

Rent Owing To December 31, 2022	\$16,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,600.00
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	\$14,586.00

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

Rent Owing To Hearing Date	\$11,778.60
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,600.00
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	- \$1,700.00
Less the amount of the interest on the last month's rent deposit	- \$14.76
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	\$8,649.84
Plus daily compensation owing for each day of occupation starting October 12, 2022	\$52.60 (per day)