



Order under Section 69 Residential Tenancies Act, 2006

Citation: Lambe v 5256752, 2022 ONLTB 12514

Date: 2022-11-23

File Number: LTB-L-017386-22

In the matter of: BSMT, 6114 SILKEN LAUMANN WAY
Mississauga ON L5V1A1

Between: Anita Levy, Henry Levy Landlord

And

Manuel Paule,
Madeline Paule

Tenants

Anita Levy, Henry Levy (the 'Landlord') applied for an order to terminate the tenancy and evict 5256752, 5256752 (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

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

The Landlord's Legal Representative, J. Lambe, and the Tenants attended the hearing.

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 \$1,600.00. 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 Tenants have paid \$4,800.00 to the Landlord since the application was filed.
6. The rent arrears owing to October 31, 2022 are \$8,000.00.
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 \$1,600.00 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.
9. Interest on the rent deposit, in the amount of \$13.31 is owing to the Tenants for the period from February 1, 2022 to October 11, 2022.

Relief from Eviction

10. The Tenant testified that he did not pay rent as he alleges that the Landlord cut off his hydro back in late March or early April 2022. He testified that hydro is not an issue currently. The Tenant testified that he has reached out to a social service agency to get assistance with the arrears, and he expects that they will pay the remaining balance. He testified that he doesn't have a date for when that payment may be made. The Tenant testified that he lives in the unit with his wife and two children. His income is from ODSP.
11. The Tenants suggest a payment plan that would take approximately 6 years to pay off the arrears by paying \$100.00 a month until the arrears are paid in full.
12. The Landlord is requesting an order with a delayed termination. In regard to the hydro issue, the Landlord submits that the power was shorted out due to overloading the breaker. The Landlord sent an electrician, and the issue was fixed. There are no issues with the Hydro as of the date of the hearing. As for the social service agency that could potentially help out with the arrears, the Landlord submits that they have had a conversation with a worker from the agency and the agency has already made all the payments towards the arrears that they are able to make, and no further payments are outstanding.
13. Based on the evidence before me, I do not find that the payment plan that the Tenants suggest is reasonable in the circumstances. The Tenants are proposing a six-year payment plan. This Tenancy is fairly new, less than a year old. Based on the Tenant's testimony regarding their income, they cannot afford the \$100.00 payment towards the arrears that they are suggesting. I find that this tenancy is no longer affordable for the Tenants and this tenancy will terminate.
14. Section 83.3 of the Act says that I must deny eviction if I find that the Landlord is in serious breach of their responsibilities. Based on the evidence before me, I do not find this is the case. The Tenant testified that there are no issues with the hydro as of the date of the hearing.
15. 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 11, 2022 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants voids this order.
2. The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:

- \$9,786.00 if the payment is made on or before November 30, 2022. See Schedule 1 for the calculation of the amount owing.

OR

- \$11,386.00 if the payment is made on or before December 11, 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 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 Tenants may only make this motion once during the tenancy.
4. If the Tenants does not pay the amount required to void this order the Tenants must move out of the rental unit on or before December 11, 2022
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$5,551.29. 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 \$52.60 per day for the use of the unit starting October 12, 2022 until the date the Tenants moves out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before December 11, 2022, the Tenants 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.

November 23, 2022
Issued

Date
Emily Robb
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 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	\$14,400.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$4,800.00
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 is entitled to	- \$
Total the Tenants must pay to continue the tenancy	\$9,786.00

B. Amount the Tenants 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	\$16,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$4,800.00
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 is entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$11,386.00

C. Amount the Tenants 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 Tenants paid to the Landlord since the application was filed	- \$4,800.00
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	- \$1,600.00
Less the amount of the interest on the last month's rent deposit	- \$13.31
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00

Less the amount of the credit that the Tenants is entitled to	- \$
Total amount owing to the Landlord	\$5,551.29
Plus daily compensation owing for each day of occupation starting October 12, 2022	\$52.60 (per day)