



Order under Section 69 Residential Tenancies Act, 2006

Citation: Metcap Living Management Inc v Pender, 2022 ONLTB 12582

Date: 2022-11-22

File Number: LTB-L-017813-22

In the matter of: 302, 440 RATHBURN RD
ETOBICOKE ON M9C3S7

Between: Metcap Living Management Inc Landlord

And

Desiree Kenny, Isabel Pender Tenant

Metcap Living Management Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Desiree Kenny, Isabel Pender (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's representative S. Enriquez and the Tenant Desiree Kenny (DK) 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 \$2,269.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$74.60. This amount is calculated as follows: \$2,269.00 x 12, divided by 365 days.
5. The Tenant has paid \$7,935.00 to the Landlord since the application was filed.
6. The rent arrears owing to October 31, 2022 are \$9,217.00. DK does not dispute the amount owing.
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 \$2,269.00 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.

Section 83

9. Section 83 requires that I consider all the circumstances, including the Tenants' and the Landlord's situations to determine if it would be appropriate to grant section 83 relief from eviction.
10. The Landlord's representative advised that the Landlord has tried to reach out to the Tenants regarding a repayment plan, without success. There are substantial arrears owing and the Landlord's representative noted that any further delay is prejudicial to the Landlord, given the Landlord's own financial commitments.
11. DK noted she has other bills to pay and is dependent upon her partner to pay rent. She requested a payment plan of \$700, stating her partner could seek out more employment hours in order to commence a repayment plan with the Landlord. The Tenant's partner did not appear at the hearing to give evidence as to his income prospects or his current ability to pay. Given the lack of particulars as to the Tenants' ability to pay back the arrears, I find DK's submissions about repayment to be uncertain and speculative. The rental arrears have steadily increased, with only partial payments being made in the months leading up to the hearing. In the event eviction were ordered, DK noted she has family nearby.
12. I have considered all of the disclosed circumstances in accordance with subsection 83 of the *Residential Tenancies Act, 2006* (RTA), including whether the Landlord attempted to negotiate a repayment agreement with the Tenants 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:**
 - \$11,672.00 if the payment is made on or before November 30, 2022. See Schedule 1 for the calculation of the amount owing.

OR

 - \$13,941.00 if the payment is made on or before December 3, 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 3, 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 3, 2022**

5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$5,664.41. 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 Tenants shall also pay the Landlord compensation of \$74.60 per day for the use of the unit starting October 12, 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 3, 2022, the Tenants will start to owe interest. This will be simple interest calculated from December 4, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 3, 2022, then starting December 4, 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 4, 2022.

November 22, 2022
Date Issued

Peter Nicholson
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 4, 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	\$19,421.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$7,935.00
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	\$11,672.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 3, 2022

Rent Owing To December 31, 2022	\$21,690.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$7,935.00
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	\$13,941.00

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

Rent Owing To Hearing Date	\$15,703.60
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$7,935.00
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	- \$2,269.00
Less the amount of the interest on the last month's rent deposit	- \$21.19
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	\$5,664.41
Plus daily compensation owing for each day of occupation starting October 12, 2022	\$74.60 (per day)