



Sep 11, 2023

Landlord and Tenant Board

**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Carcani v Tontegode, 2023 ONLTB 59081

Date: 2023-09-11

File Number: LTB-L-030652-23

In the matter of: 2 EAST HAMPTON RD
ST CATHARINES ON L2T3E1

Between: Ornela Carcani and Ali Ramadan

Landlords

And

Joshua Michael lorne Tontegode, Michelle
Dolbeck and Diane Dolbeck

Tenants

Ornela Carcani and Ali Ramadan (the 'Landlords') applied for an order to terminate the tenancy and evict Joshua Michael lorne Tontegode, Michelle Dolbeck and Diane Dolbeck (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on August 15, 2023.

The Landlords and the Landlords' Legal Representative Masoud Tchavoshi were present at the hearing. The Tenants Joshua Michael lorne Tontegode and Michelle Dolbeck were present at the hearing and appeared on behalf of Diane Dolbeck, who was not present. The Tenant Joshua Michael lorne Tontegode spoke with Duty Counsel prior to the hearing.

Preliminary Issue:

1. A preliminary issue was raised with the parties with respect to the certificate of service and whether all the Tenants named in the addendum to the certificate were served in the same manner, by in person service. I accepted the Landlords' Legal Representative's submission that all three of the Tenants had been served in this manner.

Determinations:

1. The Landlords 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 \$2,800.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$92.05. This amount is calculated as follows: \$2,800.00 x 12, divided by 365 days.

5. The Tenants have paid \$11,700.00 to the Landlords since the application was filed.
6. The rent arrears owing to August 31, 2023 are \$6,000.00.
7. The Landlords incurred costs of \$186.00 for filing the application and are entitled to reimbursement of those costs.
8. The Landlords collected a rent deposit of \$1,750.00 from the Tenants and this deposit is still being held by the Landlords. 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 \$48.21 is owing to the Tenants for the period from January 1, 2021 to August 15, 2023.

Relief from eviction:

10. 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 Landlords attempted to negotiate a repayment agreement with the Tenants. I find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
11. The Tenants provided income information at the hearing which would suggest that they have an ability to pay the lawful rent moving forward due to their net household income, in addition to a surplus each month that could be put towards arrears.
12. The Tenant Michelle Dolbeck provided evidence that she has two school aged children and that in the event that the tenancy were terminated, the children would have significant difficulty adjusting to a new environment. The Tenants proposed a repayment plan of \$2,800.00 being paid by September 1, 2023 with \$600.00 in additional payments being made monthly until the balance of arrears were paid off.
13. The Landlords' Legal Representative submitted that the Tenants have defaulted on a payment plan that they entered into in the past, and that the Landlords are small scale Landlords who do not have the ability to carry the property with rent going unpaid.
14. Given the income information provided by the Tenants at the hearing I find that the Tenants can afford a payment plan of \$3,000.00 towards arrears per month.

It is ordered that:

1. The Tenants shall pay to the Landlords their lawful rent on or before the first day of the month commencing October 1, 2023 and through to and including November 1, 2023, or until the arrears are paid in full, whichever date is earliest.
2. The Tenants shall pay \$6,186.00 to the Landlords which consists of \$6,000.00 in rental arrears and the \$186.00 filing fee according to the following schedule:
 - a) The Tenants shall pay \$3,000.00 to the Landlords on or before September 15, 2023;
 - b) The Tenants shall pay \$3,000.00 to the Landlords on or before October 15, 2023;
 - c) The Tenants shall pay \$186.00 to the Landlords or before November 15, 2023.

3. If the Tenants fail to make any of the payments in accordance with paragraphs 1 and 2 and by the dates required, then:
- a) The Landlords may apply under section 78 of the *Residential Tenancies Act*, 2006 (the 'Act') for an order terminating the tenancy and evicting the Tenants, and for the payment of any new arrears of rent and NSF charges not already ordered under paragraph 2 of this order. The Landlords must make the application within 30 days of a breach of a condition set out in paragraphs 1 and 2 of this order.
 - b) The balance owing under paragraph 2 of this order shall become payable on the day following the date of default. The monies owing shall bear interest at the post-judgment interest rate determined under subsection 207(7) of the Act.

September 11, 2023

Date Issued



Madeline Ntoukas
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.