



Order under Section 69 Residential Tenancies Act, 2006

Citation: Harrichand v Pottie, 2023 ONLTB 75477

Date: 2023-11-20

File Number: LTB-L-050062-23

In the matter of: 2, 2 HAVENLEA RD
SCARBOROUGH ON M1X1S6

Between: Samuel Harrichand

And

Derek Pottie
Anita Morningstar

I hereby certify this is a
true copy of an Order dated

Nov 20, 2023

Landlord and Tenant Board

Landlord

Tenants

Samuel Harrichand (the 'Landlord') applied for an order to terminate the tenancy and evict Derek Pottie ("DP") and Anita Morningstar ("AM") (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on November 7, 2023.

The Landlord 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 \$1,200.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$39.45. This amount is calculated as follows: \$1,200.00 x 12, divided by 365 days.
5. The Tenants have paid \$3,390.00 to the Landlord since the application was filed.
6. The rent arrears owing to December 6, 2023 are \$3,132.00.
7. The Tenants did not dispute the amount of rent owing.
8. The Tenants spoke with Tenant Duty Counsel before the hearing and are aware of their rights under the Act to pursue an application against the Landlord should they see fit.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

10. The Landlord collected a rent deposit of \$1,200.00 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.
11. Interest on the rent deposit, in the amount of \$27.62 is owing to the Tenants for the period from December 7, 2022 to November 7, 2023.

Relief from eviction

12. 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 31, 2023 pursuant to subsection 83(1)(b) of the Act.
13. The Tenants requested an order terminating the tenancy January 1, 2024 and return of their last months' rent deposit being held by the Landlord. The Tenants indicated they have no intention of paying rent owing for their last month of tenancy.
14. The Landlord requested a standard order terminating the tenancy within 11 days of the date of the order.
15. I find it would not be unfair to grant the Tenant's requested delay. The Landlord is holding a last months' rent deposit in the amount of one months' rent, plus interest owing on the deposit. The last months' rent deposit will be applied to the December rent meaning the Tenants will not incur any more arrears if they vacate by December 31, 2023.

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:**
 - \$3,318.00 if the payment is made on or before December 6, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
 - \$4,518.00 if the payment is made on or before December 31, 2023. 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 31, 2023 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 31, 2023**
5. If the Tenants does not void the order, the Tenants shall pay to the Landlord \$929.83. 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 \$39.45 per day for the use of the unit starting November 8, 2023 until the date the Tenants moves out of the unit.
7. If the Tenants does not pay the Landlord the full amount owing on or before December 1, 2023, the Tenants will start to owe interest. This will be simple interest calculated from December 2, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 31, 2023, then starting January 1, 2024, 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 January 1, 2024.

November 20, 2023
Date Issued



Elena Jacob
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 July 1, 2024 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 December 6, 2023

Rent Owing To December 6, 2023	\$6,522.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$3,390.00
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	\$3,318.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before December 31, 2023

Rent Owing To January 6, 2024	\$7,722.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$3,390.00
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	\$4,518.00

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

Rent Owing To Hearing Date	\$5,361.45
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$3,390.00
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	- \$1,200.00
Less the amount of the interest on the last month's rent deposit	- \$27.62
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 amount owing to the Landlord	\$929.83
Plus daily compensation owing for each day of occupation starting November 8, 2023	\$39.45 (per day)