



Order under Section 69 Residential Tenancies Act, 2006

File Number: LTB-L-035148-24

In the matter of: 2, 200 CAMBERLEY CRES
KINGSTON ON K7M4C4

Between: EBRU BURCIN DJAMGOUZ
TEVFIK OKAY DJAMGOUZ

And

CRAIG DOLISZNY

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

OCT 31, 2024

Landlord and Tenant Board

Landlord

Tenant

EBRU BURCIN DJAMGOUZ and TEVFIK OKAY DJAMGOUZ (the 'Landlord') applied for an order to terminate the tenancy and evict CRAIG DOLISZNY (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 7, 2024.

The Landlords' Legal Representative Lisa Duchene, Amanda Hiscock and Tenant Duty Counsel for Amanda Hiscock, Joanna Michalopoulos attended the hearing.

As of 3:05 p.m., the Tenant Craig Doliszny was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing.

Determinations:

Preliminary issues:

1. The parties before the Board requested that the L1 application be amended to remove Amanda Hiscock as a respondent as she vacated the rental unit on April 19, 2024 pursuant to an N15 notice of termination served under section 47.1(2)(b) of the *Residential Tenancies Act, 2006* (the 'Act') and also that the Tenant was not in possession of the rental unit at the time the L1 application was filed with the Board.
2. In *1162994 Ontario Inc. v. Bakker*, 2004 CanLII 59995 ON CA, the Ontario Court of Appeal held that "possession of a rental unit refers to some form of control over the unit as demonstrated by factors as access to, use of or occupation of the unit".
3. Subsection 87(1)(b) of the *Act* states that a Landlord can apply to the Board for an order for rent arrears only if the tenant is in possession of the rental unit. The evidence before me does not support that the Tenant Amanda Hiscock was in possession of the rental unit on July 10, 2024, the date of filing the L1 application.

4. As a result, I am satisfied that the Tenant Amanda Hiscock was not in possession of the rental unit when the L1 application was filed with the Board. The L1 application is amended to remove Amanda Hiscock from the L1 application as they vacated the rental unit on April 19, 2024 and was not in possession of the rental unit when the L1 application was filed.

The L1 Application:

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 \$1,550.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$50.96. This amount is calculated as follows: \$1,550.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to October 31, 2024 are \$12,400.00.
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 \$1,550.00 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 \$52.55 is owing to the Tenant for the period from May 31, 2023 to October 7, 2024.
10. The Landlord's Legal Representative was not aware of any factors to consider with respect to relief from eviction. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including 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.
11. This order contains all of the reasons within it and no further reasons will be issued.

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:**
 - \$12,586.00 if the payment is made on or before October 31, 2024. See Schedule 1 for the calculation of the amount owing.

OR

- \$14,136.00 if the payment is made on or before November 11, 2024. 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 November 11, 2024 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 November 11, 2024.**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$9,790.17. 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 \$50.96 per day for the use of the unit starting October 8, 2024 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 November 11, 2024, the Tenant will start to owe interest. This will be simple interest calculated from November 12, 2024 at 6.00% annually on the balance outstanding.
 8. If the unit is not vacated on or before November 11, 2024, then starting November 12, 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 November 12, 2024.

October 31, 2024
Date Issued


Heather Chapple
Vice Chair, 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 May 12, 2025 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 October 31, 2024

Rent Owing To October 31, 2024	\$12,400.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	\$12,586.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before November 11, 2024

Rent Owing To November 30, 2024	\$13,950.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	\$14,136.00

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

Rent Owing To Hearing Date	\$11,206.72
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	- \$1,550.00
Less the amount of the interest on the last month's rent deposit	- \$52.55
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 amount owing to the Landlord	\$9,790.17
Plus daily compensation owing for each day of occupation starting October 8, 2024	\$50.96 (per day)