



Order under Section 69
Residential Tenancies Act, 2006

File Number: TEL-03678-19

Inc (the 'Landlord') applied for an order to terminate the tenancy and evict N T and M A G (the 'Tenants') because they have been persistently late in paying their rent. The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard in Toronto on September 20, 2019.

The Landlord, the second-named Tenant above, and the sister and agent of the first-named Tenant above, L G, attended the hearing. The Landlord was represented by S H.

As a result of a Superior Court of Justice order suspending the enforcement of LTB eviction orders during the period from March 19, 2020 to July 31, 2020, the issuance of this Order has been delayed. Any payments made by the Tenant(s) to the Landlord after the application was filed by the Landlord must deducted from the amount ordered by the Board.

Determinations:

1. There is no dispute here that the Tenants have persistently failed to pay the rent on the date it was due.
2. According to the Landlord's ledger for the period August, 2018 to April, 2019 the Tenants were late paying the rent each month but by the end of the month they were either caught up or mostly caught up. But then in May of 2019 the Tenants started to fall behind. They did not catch up and reach a zero balance until close to the end of August, 2019 at which point they paid \$3,644.09. That lump sum payment brought them to a zero balance and discontinued the Landlord's most recent L1 application (contained in Board file TEL-03671-19).
3. The dispute between the parties here is the Tenants' request for relief from eviction pursuant to s. 83 of the *Residential Tenancies Act, 2006* (the 'Act'). They ask for an opportunity to save the tenancy subject to the requirement rent be paid on time into the future. The Landlord opposes that request and asks for a standard eviction order.
4. That means the issue for the Board is whether or not it would be unfair in all of the circumstances to grant the Tenants the relief sought.
5. This tenancy began in 2014. There are an unknown number of adults and children living in the rental unit. The children attend school nearby.
6. There have been three L1 applications for non-payment of rent, all of which have resulted in the Tenants paying everything outstanding before an eviction order could issue. TEL-

75865-16 was discontinued effective February 13, 2017. TEL-78535-17 was discontinued April 19, 2017. The most recent one was discontinued August 22, 2019.

7. This is the first application alleging persistent late payment of rent. The notice of termination was served on the Tenants August 9, 2019. As stated above, the Tenants cleared the arrears on or about August 22, 2019. As of the date of hearing nothing had been paid for the month of September, so the rent for September 2019, was also not paid on time.
8. In response to my questions, the Tenants say that they did not realise that persistent late payment of rent could get them evicted. They have monthly income of around \$5,000.00 a month which should be more than sufficient to pay rent on time and in full but the Tenants have other debts and there is an affordability issue. As of the date of hearing the monthly rent was \$1,658.61. Things worsened in the spring of 2019 because the second-named Tenant above became ill and had to have surgery. They have not paid September's rent on time because they used all of their resources to pay off the arrears in August, 2019. They want to catch up with September's rent and pay rent on time starting October 1, 2019. None of the Tenants' evidence was corroborated by documentation.
9. The problem with the Tenants' request for relief from eviction is that the only measure by which the Board can analyse their promises to pay in the future is their behaviour in the past.
10. The Tenants do not deny having a multi-year history of paying rent late; they do not deny knowing when rent is due; they do not deny prioritizing other debts over paying rent. They claim they did not know being persistently late could result in eviction but they did in fact know that sometime in the first half of August of 2019 because the Landlord served notice of termination on them for persistent late payment. Despite considerable income they did not pay rent on time for September, 2019 and continued to be in arrears as of the date of hearing. It is something of a mystery as to where their income is going.
11. In other words, the evidence supports the conclusion it is more likely than not that the Tenants will continue to pay rent late into the future. They have an affordability issue. As a result, granting relief in the form requested would be unfair to the Landlord as the Landlord will inevitably have to bring additional legal proceedings to the Board with respect to this tenancy.
12. In the alternative, the Tenants ask that eviction be delayed until December 31, 2019. Given the delays in writing and issuing this order, the Tenants have essentially gained the delay they requested. No further delay is justifiable.
13. As a result of all of the above, the Board's standard order shall issue.
14. The Landlord collected a rent deposit of \$1,658.61 from the Tenants and this deposit shall be applied to any outstanding daily compensation owing to the Landlord.

15. Interest on the rent deposit is owing to the Tenants for the period from January 1, 2019 to October 31, 2019 totalling \$24.87. This amount shall also be offset against the daily compensation owing.
16. The Landlord incurred costs of \$175.00 for filing the application and is entitled to reimbursement of those costs.
17. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated effective October 31, 2019 for persistent late payment of rent. The Tenants must move out of the rental unit on or before August 15, 2020.
2. The Tenants shall pay to the Landlord \$13,475.86 (less any payment made to the Landlord after the hearing held on September 20, 2019 for the period commencing November 1, 2019), which represents compensation for the use of the unit from November 1, 2019 to August 4, 2020, less the rent deposit and interest the Landlord owes on the rent deposit.
3. The Tenants shall also pay to the Landlord \$54.53 per day for compensation for the use of the unit from August 5, 2020 to the date they move out of the unit.
4. The Tenants shall also pay to the Landlord \$175.00 for the cost of filing the application.
5. If the Tenants do not pay the Landlord the full amount owing on or before August 15, 2020, they will start to owe interest. This will be simple interest calculated from August 16, 2020 at 3.00% annually on the balance outstanding.
6. If the unit is not vacated on or before August 15, 2020, then starting August 16, 2020, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. 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 August 16, 2020.

August 4, 2020
Date Issued



Shelby Whittick
Member, Landlord and Tenant Board

Toronto East-RO
2275 Midland Avenue, Unit 2
Toronto ON M1P3E7

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 February 16, 2021 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.