



MAR 16, 2023

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

Citation: Tobar jimenez v Mcdonell, 2023 ONLTB 20811

Date: 2023-03-16

File Number: LTB-L-036949-22

In the matter of: 777 MOIRA ST W
BELLEVILLE ON K8N4Z2

Between: Daniela Tobar jimenez and Vladimir Illescas Landlord

And

Nicole Mcdonell Tenant

Daniela Tobar jimenez and Vladimir Illescas (the 'Landlord') applied for an order to terminate the tenancy and evict Nicole Mcdonell (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 1, 2023.

The Landlord's representative, Mary Alfredsson, and the Tenant attended the hearing

Preliminary Issues:

The Board's Monetary Limit

1. The amount of arrears claimed by the Landlord exceeds the Board's \$35,000.00 monetary jurisdiction as set out in s. 207 of the *Residential Tenancies Act, 2006*.
2. The Landlord's representative acknowledged the Board's monetary limit and submitted that the Landlord wished to proceed with the application anyway.

Nature of the tenancy

3. The tenancy commenced on May 21, 2021. The rental unit was a house with use of the main floor and the basement rented as a single rental unit. There were four (4) Tenants named on the lease.
4. The Tenant testified that she moved into the rental unit with another family of three (3) who were all listed on the lease when the tenancy began on May 1, 2021. Shortly after the tenancy commenced, the three other Tenants decided to vacate the rental unit around August 31, 2021.
5. After the three other Tenants moved out, the remaining Tenant was not able to afford the rent as her income was about \$700.00 per month. The Tenant asked the Landlord to get roommates to assist with the monthly rent. The Landlord denied this request.

6. The Landlord testified that the parties had been in discussions with the family that vacated the rental unit as well as the current Tenant. As the family was leaving, the Landlord agreed for them to vacate however, the current Tenant did not agree to vacate the rental unit. The Landlord did deny the Tenant securing roommates, they wanted the rental unit returned to them as the Landlord's parents were moving from Chile and they required the rental unit for their parents.
7. The Landlord had attempted to negotiate the arrears with the Tenant however, the Tenant would only be able to repay the arrears if she had been able to secure new roommates.
8. In a joint tenancy, all of the tenants share a single, undivided interest in the tenancy. There is a single tenancy agreement and all of the Tenants are jointly and severally liable for the payment of the entire rent of the rental unit.
9. The classic example of a joint tenancy is a property owned by two spouses. The spouses do not typically own percentages of the property, rather they share ownership of an entire property.
10. In the context of the Act, a more important feature of joint tenancy is that co-tenants do not have separate shares of the rent. they are jointly and severally liable to the Landlord for the entire rent, meaning that if the rent is not paid, the Landlord may pursue any of them for the full amount.
11. Since a joint tenancy is undivided, there is no obvious way to terminate one tenant's interest in it. In the present case, based on the evidence before me, the three Tenants that vacated in August 2021 made an agreement with the Landlord. Ms. McDonell the remaining Tenant did not agree to vacate, but rather she chose to stay in light of the Landlord notifying her that she required the rental unit for their parents who were due to move to Canada from Chile.
12. When the Landlord filed the L1 application, the former Tenants were not in possession of the rental unit, meaning they cannot be named as Respondents in the application. Ms. McDonell chose to stay remain in the rental unit in these circumstances until November 23, 2022, thereby assuming liability the entirety of the monthly rent of \$3,000.00.

Rent Arrears Determinations:

13. 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.
14. The Tenant was in possession of the rental unit on the date the application was filed.
15. The Tenant vacated the rental unit on November 23, 2022. Rent arrears are calculated up to the date the Tenant vacated the unit.
16. The lawful rent is \$3,000.00. It was due on the 1st day of each month.
17. The Tenant has not made any payments since the application was filed.

6. The rent arrears owing to November 23, 2022 are \$38,268.49. The maximum the Board can award is \$35,000.00, which is the Board's monetary jurisdiction.
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 \$3,000.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
9. Interest on the rent deposit, in the amount of \$56.42 is owing to the Tenant for the period from May 1, 2021 to November 23, 2022.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of November 23, 2022, the date the Tenant moved out of the rental unit
2. The Tenant shall pay to the Landlord \$35,000.00, which is the Board's maximum monetary jurisdiction. This amount which includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
3. If the Tenant does not pay the Landlord the full amount owing on or before March 27, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 28, 2023 at 5.00% annually on the balance outstanding.

March 16, 2023
Date Issued



Camille Clyne
Member, Landlord and Tenant Board

15 Grosvenor St, 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay as the tenancy is terminated

Rent Owing To Move Out Date	\$38,268.49
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 of the last month's rent deposit	- \$3,000.00
Less the amount of the interest on the last month's rent deposit	- \$56.42
Total amount owing to the Landlord	\$35,000.00