



I hereby certify this is a
true copy of an Order dated
JUL 14, 2023

Landlord and Tenant Board

Order under Section 69 Residential Tenancies Act, 2006

Citation: Ambuga v Goncalves, 2023 ONLTB 50106

Date: 2023-07-14

File Number: LTB-L-007209-23

In the matter of: 19 DEER RIDGE TRAIL
CALEDON ON L7C3Z7

Between: Rashmi Pradeep Ambuga and Pradeep
Dwarkanath Ambuga

Landlords

And

Bruno Miguel Fernandes Goncalves

Tenant

Rashmi Pradeep Ambuga and Pradeep Dwarkanath Ambuga (the 'Landlords') applied for an order to terminate the tenancy and evict Bruno Miguel Fernandes Goncalves, Lorraine Susan Hind and Veronica Goncalves (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

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

The Landlords's legal representative, Ramadevi Gavisetty ('RG'), and the Tenants named on the application, Bruno Miguel Fernandes Goncalves ('BG'), Lorraine Susan Hind ('LH'), and Veronica Goncalves ('VG'), attended the hearing.

Preliminary Issue:

1. There was a preliminary issue as to who the lawful tenant(s) of the rental unit is/are. The named parties all agreed that VG is an occupant of the rental unit and not a tenant. VG is therefore removed as a party to this application.
2. LH claimed that she is not a tenant, and the Landlords agreed, however, BG claimed that LH is a tenant.
3. VG is BG's spouse, and LH is VG's mother. LH was originally a tenant of the rental unit. The evidence before me was that LH moved out of the rental unit on January 1, 2023. This was precipitated by a big fight that occurred between LH and BG and LG on December 25, 2022, after which LH said BG and VG forced her out.
4. LH submitted an email from RG dated January 18, 2023, wherein RG, on behalf of the Landlords, confirmed that LH terminated her interest in the tenancy as of January 1, 2023. The email also says that to remove LH from this application, they needed confirmation in writing from BG and VG that they agreed to remove LH from the lease and to carry the entire rent on their own.

5. BG's position was that LH is a tenant because he never agreed to her interest in the tenancy being terminated.
6. LH also gave evidence of a text message she received from BG on January 2, 2023 asking for LH's key back, because LH was no longer living there, BG and VG are responsible for the house, and LH no longer has a right to hold a key to "our house". BG acknowledged sending this text message, but gave evidence that LH replied by text message saying that she was still on the lease and was waiting for confirmation from the Landlords about what to do with the key. LH said that she did later get confirmation from the Landlords acknowledging she moved out and her interest in the tenancy terminated.
7. It is clear from the evidence that none of the parties expected or intended for LH to ever move back into the rental unit.
8. I am mandated by section 202 of the Act to ascertain the real substance of all transactions and activities related to a rental unit and the good faith of the participants, and in doing so, I may disregard the outward form of a transaction and may have regard to the pattern of activities relating to the rental unit. On a balance of probabilities and based on the evidence before me, I find that the real substance of what occurred is that BG, LH and the Landlords all agreed that LH's interest in the tenancy terminated as of January 1, 2023. This application was filed on January 23, 2023, after LH moved out and after her tenancy was terminated. LH is therefore removed as a party to this application.

Determinations:

9. The Landlords 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.
10. As of the hearing date, the Tenant was still in possession of the rental unit.
11. The lawful rent is \$3,000.00. It is due on the 16th day of each month.
12. Based on the Monthly rent, the daily rent/compensation is \$98.63. This amount is calculated as follows: \$3,000.00 x 12, divided by 365 days.
13. The Tenant has not made any payments since the application was filed.
14. The parties agreed that the rent arrears owing to June 15, 2023 are \$16,500.00.
15. The Landlords incurred costs of \$186.00 for filing the application and are entitled to reimbursement of those costs.
16. The Landlords collected a rent deposit of \$3,000.00 from the Tenant 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.
17. Interest on the rent deposit, in the amount of \$77.92 is owing to the Tenant for the period from November 16, 2021 to June 7, 2023.
18. The tenancy between the parties was already terminated by consent order on a separate application to the LTB as of June 30, 2023 (LTB-L-066594-22).

19. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and given the consent order in LTB-L-066594-22, I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated as of June 30, 2023.
2. The Tenant shall pay the Landlords \$12,876.57. 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 Landlords owe on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
3. The Tenant shall also pay the Landlords compensation of \$98.63 per day for the use of the unit starting June 8, 2023 until the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlords the full amount owing on or before July 25, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 26, 2023 at 6.00% annually on the balance outstanding.
5. If the unit was not vacated on or before June 30, 2023, then starting July 1, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after July 1, 2023.

July 14, 2023
Date Issued

Mark Melchers
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 January 26, 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 Tenant must pay to the Landlords because the tenancy is terminated

Rent Owing To Hearing Date	\$15,768.49
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords 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	- \$3,000.00
Less the amount of the interest on the last month's rent deposit	- \$77.92
Less the amount the Landlords 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 Landlords	\$12,876.57
Plus daily compensation owing for each day of occupation starting June 8, 2023	\$98.63 (per day)