



Order under Section 69 Residential Tenancies Act, 2006

Citation: Chahal v Mc connell, 2024 ONLTB 16798

Date: 2024-03-11

File Number: LTB-L-067692-22

In the matter of: MAIN AND UPPER FLOOR,
31 MUSCOVY DR
BRAMPTON ON L7A4M2

Between: Lokesh Chahal

And

Jennifer Marie McConnell
Joseph M Cichello

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

MAR 11, 2024

Landlord and Tenant Board

Landlord

Tenants

Lokesh Chahal (the 'Landlord') applied for an order to terminate the tenancy and evict Jennifer Marie McConnell and Joseph M Cichello (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on May 10, 2023 February 26, 2024.

Interim order LTB-L-067692-22-IN was issued on May 18, 2023, *inter alia*, determining that Antonio Cichello and Jordan McConnell are not tenants, and removing them as parties to this proceeding.

The Landlord, the Landlord's legal representative, Maneesh Dev Mehta ('MM'), and the Tenants attended the hearing on both dates. Antonio Cichello ('AC') and AC's legal representative, Arun Kumar, attended the hearing on May 10, 2023.

Preliminary issues:

1. Jennifer Marie McConnell ('JM') also submitted that she is not a tenant, and that Joseph M Cichello ('JC') is the sole tenant. JC agreed with JM's submission, but the Landlord's position was that both JM and JC are tenants. The hearing was adjourned on May 10, 2023 to allow the parties to exchange and file any additional evidence they may have pertaining to whether JM is a Tenant, and also to allow the Tenants time to serve and file documentary evidence relative to their position that the amount the Landlord is claiming for rent arrears was incorrect.
2. As described in interim order LTB-L-067692-22-IN, at the hearing on May 10, 2023, the Tenants said they received notice of the hearing late. JM said she had important documentation that is relevant to whether she is a tenant that she did not have time to serve and file, and JC said he did not have time to submit documentation relative to payments he said he made to the Landlord that were not taken into account by the Landlord.

3. While hearing was adjourned to allow the Tenants to serve and file these documents, they did not serve and file any such documentation.
4. The Tenants were also required by interim order LTB-L-067692-22-IN to pay their ongoing rent as it comes due, which they did not do (see below).

Is JM a Tenant?

5. A copy of the lease agreement and an amendment thereto was presented as evidence by the Landlord on both May 10, 2023 and February 26, 2024.
6. The lease, dated August 9, 2021 originally names AC as the sole tenant. The Landlord also presented an amendment to the lease, removing AC as the tenant, and then adding AC, JC, and JM as tenants. The amendment is purportedly signed by AC, JC, and JM on September 11, 2021, and by the Landlord on September 13, 2021.
7. At the May 10, 2023 hearing, the Landlord said that realtors were involved in this amendment process, and there was no direct contact between the Landlord and Tenants.
8. On May 10, 2023, JM said she signed the amendment but she believed it was as an occupant because the Landlord had told her that if she was going to live in the rental unit she had to be on the lease. JC also said that JM signed as an occupant.
9. On February 26, 2024, JM said she did not sign anything indicating she would be a tenant. JC said this was accurate. Despite saying on May 10, 2023 that she signed the amendment as an occupant, on February 26, 2024 she said she did not recall signing it at all.
10. JM said she paid rent to JC, and believed JC was paying the Landlord.
11. On the evidence before me, I find that JM is a tenant because all parties to the tenancy agreement agreed that she would be added as a tenant by written amendment to the lease, executed on September 11, 2021 and September 13, 2021 (DOC-2840034, pp. 32-33).
12. I did not find JM's evidence to be credible on this issue. It changed from May 10, 2023 when she admitted signing the amendment, but said she thought she was signing as an occupant, to February 26, 2024 when she said she did not recall signing it.
13. In addition to the fact that her evidence changed, I do not accept the evidence that she signed the amendment thinking she was signing as an occupant and not a tenant. The amendment is unequivocal that her name is being added as a tenant. I find that JM did sign the amendment as she initially stated on May 10, 2023. I do not accept her evidence on February 26, 2024 that she either did not sign it or does not recall.
14. JM and JC are joint tenants of the rental unit.

Determinations:

15. 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.

16. As of the hearing date, the Tenants were still in possession of the rental unit.
17. The lawful rent is \$3,200.00. It is due on the 15th day of each month.
18. Based on the Monthly rent, the daily rent/compensation is \$105.21. This amount is calculated as follows: \$3,200.00 x 12, divided by 365 days.
19. The Tenants have paid \$4,700.00 to the Landlord since the application was filed.
20. The rent arrears owing to March 14, 2024 are \$61,700.00. JC said he did not believe this was accurate, and said that he was not being given credit for rent he paid. He said when the application was filed on November 15, 2022, the Tenants only owed \$6,500.00, not \$15,200.00 as claimed.
21. Despite being granted an adjournment allowing them to serve and file documentary evidence of payments that the Tenants claim they were not being credited for, no such evidence was filed. The Tenants provided no specific or documentary evidence to support their assertion that the quantum of rent arrears sought is not correct, such as back records or rent receipts.
22. I accept the Landlord's evidence regarding the amounts of rent charged and paid during the relevant time. This evidence was clear, convincing, and cogent. The Tenant's evidence was vague and not convincing.
23. The Landlord is aware that the LTB's monetary jurisdiction is \$35,000.00, and he elected to proceed knowing that once this order is issued his claim for rent arrears in excess of \$35,000.00 is extinguished by operation of subsection 207(3) if the *Residential Tenancies Act, 2006*.
24. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
25. The Landlord collected a rent deposit of \$3,200.00 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.
26. Interest on the rent deposit, in the amount of \$161.36 is owing to the Tenants for the period from August 15, 2021 to February 26, 2024.

Relief from Eviction

27. JM said she is still living in the rental unit, but has been moving her property into storage and intends to go to a shelter. She said she is moving anyway and is okay with any decision in terms of when the tenancy will terminate.
28. JC said he has wanted to move for awhile and will be moving regardless of my decision. He said he would need one month to find new living accommodation. MM said the Landlord would be okay with this if the rent is paid for that month. The rent for the last month of the tenancy is covered by the rent deposit, though I acknowledge the rent arrears

remain substantial. In all the circumstances, I find it is not unfair to delay eviction until March 31, 2024. I informed the parties of this decision orally at the hearing.

29. 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 March 31, 2024 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$61,886.00 if the payment is made on or before March 14, 2024. See Schedule 1 for the calculation of the amount owing.

OR

 - \$65,086.00 if the payment is made on or before March 31, 2024. 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 have paid the full amount owing as ordered plus any additional rent that became due after March 31, 2024 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 do not pay the amount required to void this order the Tenants must move out of the rental unit on or before March 31, 2024**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord **\$35,186.00**. 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. Since the amount of rent arrears owed taking all of this into account exceeds \$35,000.00, the Tenants are required to pay \$35,000.00 for rent arrears and \$186.00 for the Landlord's costs of filing the application. See Schedule 1 for the calculation of the amount owing.
6. If the Tenants do not pay the Landlord the full amount owing on or before March 31, 2024, the Tenants will start to owe interest. This will be simple interest calculated from April 1, 2024 at 7.00% annually on the balance outstanding.
7. If the unit is not vacated on or before March 31, 2024, then starting April 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. 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 April 1, 2024.

March 11, 2024

Date Issued

Mark Melchers

Member, Landlord and Tenants 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 October 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 March 14, 2024

Rent Owing To March 14, 2024	\$66,400.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$4,700.00
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	\$61,886.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before March 31, 2024

Rent Owing To April 14, 2024	\$69,600.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$4,700.00
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	\$65,086.00

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

Rent Owing To Hearing Date	\$64,462.52
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$4,700.00
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	- \$3,200.00
Less the amount of the interest on the last month's rent deposit	- \$161.36
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	\$57,587.16
LTB Monetary Jurisdiction (\$35,000.00 + filing fee)	\$35,186.00