



Mar 10, 2023

Landlord and Tenant Board

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

Citation: Shrestha v Nishant, 2023 ONLTB 24518

Date: 2023-03-10

File Number: LTB-L-047729-22

In the matter of: BASEMENT, 83 WHITE TAIL CRES
BRAMPTON ON L6Y5C1

Between: Arati Shrestha Amatya and Purushottam Shrestha Landlord

And

Harpreet Singh and Nishant Nishant Tenant

Arati Shrestha Amatya and Purushottam Shrestha (the 'Landlord') applied for an order to terminate the tenancy and evict Harpreet Singh and Nishant Nishant (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 application).

Arati Shrestha Amatya and Purushottam Shrestha (the 'Landlord') also applied for an order to terminate the tenancy and evict Harpreet Singh and Nishant Nishant (the 'Tenant') because: the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex; the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully caused undue damage to the premises; the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year (L2 application).

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on February 27, 2023.

The Landlord, the Landlord's representative Jasleen Narula and the Tenant Nishant Nishant attended the hearing.

On the date of the hearing I confirmed the Tenant's proper name as Nishant Nishant.

Determinations and Reasons:

The L1 Application

1. The rental unit is a basement apartment in a single family home, The Landlords live in the upper unit.

2. Although the basement unit does not contain a kitchen, there was no dispute that the Tenants were not required to share the kitchen in the Landlord's unit. Therefore, the Board has jurisdiction to hear this matter.
3. 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.
4. The Tenants were in possession of the rental unit when the application was filed.
5. On the date of the hearing, the Landlord was made aware that the Tenant Nishant Nishant vacated the rental unit January 27, 2023 but did not provide notice to the Landlord.
6. The Landlord's representative said the first-named Tenant was aware of the hearing as disclosure was provided on February 19, 2023.
7. The lawful rent is \$1,325.00. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$43.56. This amount is calculated as follows: $\$1,325.00 \times 12$, divided by 365 days.
9. The Tenants have not made any payments since the application was filed.
10. The rent arrears owing to February 28, 2023 are \$9,275.00.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. There is no last month's rent deposit.
13. Although the Tenant at the hearing disagrees with the amount of arrears claimed by the Landlord, he did not dispute missed payment but was unsure of the total amount owed. The Tenant did not provide any documentary evidence to support his position.
14. The Landlord seeks termination of tenancy by way of a standard order.

The L2 Application

N12 Notice:

15. The Landlord's L2 application, served to the Tenants August 8, 2022 is predicated on an N12 notice of termination and an N7 notice of termination.
16. At the hearing, I explained to the parties that the Landlord's affidavit failed to indicate the Landlord's intention to occupy the rental unit for a period no less than one year as per s.72(1)(a) which states:

72 (1) The Board shall not make an order terminating a tenancy and evicting the tenant in an application under section 69 based on,

(a) a notice of termination given under section 48 on or after the day section 13 of the Rental Fairness Act, 2017 comes into force, unless the landlord has filed with the Board an affidavit sworn by the person who personally requires the rental unit certifying that the

person in good faith requires the rental unit for his or her own personal use for a period of at least one year;

17. The Landlord's application is dismissed because the affidavit filed by the Landlord did not provide all of the required information given under s.72(1)(a).

N7 Notice:

18. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy or the claim for compensation in the application. Therefore, the application is dismissed.

19. On August 8, 2022, the Landlord gave the Tenants an N7 notice of termination alleging that the Tenants removed the fire detectors which causes safety concerns for the Landlord, the Tenants have a portable gas stove in contravention of the agreement, the Tenants are noisy and this disturbance affects their health, smoke in the rental unit, the Tenants keep the side door unlocked which is unsafe for the Landlord.

20. As explained at the hearing, the N7 notice did not contain pleadings to support the claim of wilful damage to the rental unit or residential complex.

21. The Landlord testified that on or around July 20, 2022 the Landlord noted the Tenants had removed the fire detectors in the rental unit. He said that after requesting the Tenants re-install the fire detectors, they complied and are intact to the date of the hearing.

22. The Landlord said the Tenants are noisy and he has asked them to be more mindful of noise levels and the Tenants told him to go away.

23. The Landlord testified that the Tenants smoke in the rental unit and this seriously impairs the safety of himself and his family.

24. With respect to the unlocked doors, the Landlord did not lead any evidence to suggest there has been any damage or safety concerns by leaving the doors unlocked.

25. When I asked why the Landlord did allow the Tenants an opportunity to correct the alleged behaviour by service a voidable N5 notice versus a non-voidable N7 notice, the Landlord said the situation was "too high stress" and that was not an option.

26. The Tenant did not provide any details or clarification to the allegations asserted by the Landlord.

Analysis

27. As explained to the parties, an N7 notice of termination is for short notice termination, with no opportunity for the tenant to rectify the issues. This type of application is given priority eviction by the Sheriff. I believe the legislature intended to reserve this application for the most serious of situations. Examples of a serious impairment of safety would be situations involving firearms, assaults or fires. I also explained that there are other grounds for termination available for less serious conduct, which in my view is the matter before the Board.

28. To terminate a tenancy for serious impairment of safety, there must be evidence that someone's safety has actually been impaired, and in a serious manner, or that serious impairment of safety is imminent. It is not sufficient to state that some harm might have happened. The claims about safety impairment arising from the Tenants failure to secure the side door is speculative as no evidence of harmful impacts, injuries or damages were submitted. Additionally, I cannot make a finding that the level of noise, smoke or disruption caused by the Tenants rises to a level necessary when serving this type of notice.
29. As for the wilful damage claim, the notice did not contain any pleading to support this allegation.
30. Based on the evidence before the Board, and on a balance of probabilities, the Landlord has not proven that the Tenants have seriously impaired the safety of the Landlord or others at the residential complex. Nor can I make a finding that the Tenants have wilfully caused undue damage to the residential complex. Accordingly, the Landlord' application must be dismissed.

Relief from Eviction

31. The Landlord was unaware of any reason to delay or deny eviction.
32. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
33. This order contains all of he reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The Landlord's L2/N12/N7 application is dismissed.
2. The tenancy between the Landlord and the Tenants is terminated unless the Tenants voids this order.
3. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$10,786.00 if the payment is made on or before March 21, 2023. See Schedule 1 for the calculation of the amount owing.
4. 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 21, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
5. **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 21, 2023**
6. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$9,312.12. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.

7. The Tenants shall also pay the Landlord compensation of \$43.56 per day for the use of the unit starting February 28, 2023 until the date the Tenants move out of the unit.
8. If the Tenants do not pay the Landlord the full amount owing on or before March 21, 2023, the Tenants will start to owe interest. This will be simple interest calculated from March 22, 2023 at 5.00% annually on the balance outstanding.
9. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
10. If the unit is not vacated on or before March 21, 2023, then starting March 22, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
11. 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 March 22, 2023.



March 10, 2023
Date Issued

Dana Wren
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 September 22, 2023 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 March 21, 2023

Rent Owing To March 31, 2023	\$10,600.00
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	\$10,786.00

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

Rent Owing To Hearing Date	\$9,126.11
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	- \$
Less the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord	\$9,312.12
Plus daily compensation owing for each day of occupation starting February 28, 2023	\$43.56 (per day)