



Order under Subsection 87(1) Residential Tenancies Act, 2006

Citation: Kanwar v Dhaliwal, 2024 ONLTB 25048

Date: 2024-04-05

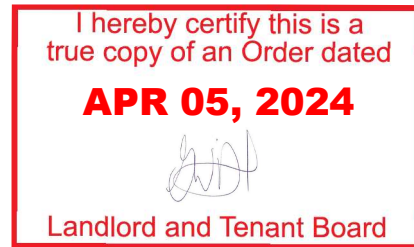
File Number: LTB-L-050800-23

In the matter of: 51 SCOTCHMERE CRES
BRAMPTON ON L6P3A6

Between: Rajan Kanwar
Pavneet Jaswal

And

Jashanjot Singh Dhaliwal



Landlords

Tenant

Rajan Kanwar and Pavneet Jaswal (the 'Landlords') applied for an order requiring Jashanjot Singh Dhaliwal (the 'Tenants') to pay the rent that the Tenants owe.

This application was heard by videoconference on February 26, 2024 at 10:23 a.m.

The Landlord Rajan Kanwar, the Tenant Jashanjot Singh Dhaliwal, the Tenant's representative Colin James Mitchell, licensed paralegal attended the hearing. Dipanshi Rishi also attended the hearing as a witness for the Tenant.

Preliminary Issue:

Preliminary Issue – Validity of Notice of Termination

1. The Tenant alleged the N4 notice of termination was invalid as it did not name all the Tenants in the rental unit, and therefore since the notice was invalid, the application be dismissed.
2. Guideline 10 of the Board's Interpretation Guidelines provides that if the landlord has entered into a tenancy agreement with more than one tenant, the Notice of Termination (N4) should name and be given to all tenants.
3. The Landlord served an N4 Notice of Termination dated May 30, 2023 on the Tenant Jashanjot Singh Dhaliwal. I find that Jashanjot Singh Dhaliwal is the sole Tenant and the notice is valid. My reasons are below.

Tenant's evidence

4. The Tenant's representative submitted Dipanshi Rishi was a Tenant. It is undisputed that Ms. Rishi lived in the basement of the residential complex, which was a single-family

home. Ms. Rishi testified she and her family were co-tenants with Jashanjot Singh Dhaliwal who resided on the main floor.

5. Ms. Rishi testified she made rent payments, at times directly to the Landlord or through her brother to the Landlord and had discussions with the Landlord directly about maintenance issues. The Tenant's representative submitted that since these transactions that are typical in landlord-tenant relationships and fall under the definition of a 'tenant' under section 2 of *Residential Tenancies Act, 2006* she was a Tenant.

Landlord's evidence

6. The Landlord testified that the sole Tenant was Jashanjot Singh Dhaliwal and therefore the N4 Notice of termination was valid as it was served on all Tenants. The Landlord further testified that while he did have interactions with Ms. Rishi from time to time, she was an occupant. To support his testimony, the Landlord submitted a copy of the signed lease agreement into evidence which listed Jashanjot Singh Dhaliwal as the Tenant and further specifically listed Ms. Rishi as an occupant along with other occupants.

Analysis

7. There was no evidence submitted by the Tenant with respect to an assignment of the rental unit, nor any evidence submitted by the Tenant that the occupant approached the Landlord, neither was there any evidence submitted that the Landlord ever approached the occupant, about any possible standing she might have, or want to have, in respect of being a "tenant" under the tenancy.
8. I agree that the term "tenant" is broadly defined in section 2 of *Residential Tenancies Act, 2006* to include, "a person who pays rent in return for the right to occupy a rental unit and includes the tenant's heirs, assigns and personal representatives." And it is clear, that whatever the personal arrangement might be between the Tenant and Ms. Rishi, it appears there was an arrangement, albeit an inconsistent arrangement, of remittance of payments to the Landlord. I cannot say that Ms. Rishi has always done so, but it appears based on the testimony of both Ms. Rishi and the Landlord that payments periodically occurred. That said, regular payments were also made between the Tenant and the Landlord and the listed payment arrangement was articulated clearly in the lease agreement that was signed by the Tenant Jashanjot Singh Dhaliwal and the rent receipts were in the amount of the lawful monthly rent listing the Tenant Jashanjot Singh Dhaliwal as the sole Tenant. Evidence of a few payments from Ms. Rishi either directly or via a third party does not alone substantiate a tenancy. Therefore, I believe that the better evidence outlined herein leads me to find that the Tenant, Jashanjot Singh Dhaliwal, was responsible for paying the lawful monthly rent to the Landlord.
9. Also, I must refer to the definition of "tenancy agreement" in the same section 2, which defines the composite term as "a written, oral or implied agreement between a tenant and a landlord for occupancy of a rental unit and includes a licence to occupy a rental unit."
10. The definition of "tenancy agreement" provides additional dimension into what a "tenant" extends to. That definition qualifies a "tenant" (as defined separately) to being someone

who enters into an occupancy agreement with a landlord, which agreement includes a licence to occupy. If no such agreement exists to rent a rental unit, that person cannot be said to truly be a “tenant”. This is the case here between Ms. Rishi and the Landlord, as nothing was adduced to suggest in any way that Ms. Rishi entered, at any time, into an agreement with the Landlord to rent the rental unit as a tenant under the tenancy. Further, nothing was adduced to suggest Ms. Rishi or the Tenant had agreed with the Landlord about any possible subletting or assignment so that the latter part of the “tenant” definition relating to “heirs, assigns...” simply does not apply here. Lastly, no written documentation about maintenance issues between the Landlord and Ms. Rishi or her family were submitted to support the allegation that maintenance matters were negotiated between the parties.

11. Based on all of the evidence before me, I am persuaded by the testimony of the Landlord, in particular, I place considerable weight to the signed lease agreement that Jashanjot Singh Dhaliwal is the sole Tenant of the subject unit, and Ms. Rishi is an occupant. Therefore since the notice named all Tenants, as I find the sole Tenant is Jashanjot Singh Dhaliwal, the notice is valid. The Tenant’s request to dismiss is denied.

Determinations:

1. The Tenant vacated the rental unit on January 31, 2024. The Tenant was in possession of the rental unit on the date the application was filed.
2. The Landlord amended their application to an L9 application solely for arrears of rent and the filing fee. The Landlord was seeking the arrears outstanding to January 31, 2024.
3. The Landlord testified the Tenant did not pay the total rent they were required to pay for the period from May 1, 2023 to January 31, 2024. The Landlord entered into evidence a summary of rent payments in the form of a rent ledger received from the Tenant.
4. The lawful rent is \$4,500.00. It is due on the 1st day of each month.
5. The total amount of arrears owing was disputed by the parties. The Landlord alleged the Tenant owed \$18,400.00 in arrears and relied on the rent ledger submitted into evidence, the Tenant testified several payments were remitted to the Landlord there were not included in the ledger.
6. The Tenant’s representative submitted copies of e-transfer receipts showing \$3,000.00 was paid to the Landlord on January 15, 2024 for a portion of the lawful monthly rent due November 1, 2023 and \$3,000.00 was paid to the Landlord on January 15, 2024 for a portion of the lawful monthly rent due December 1, 2023 and \$700.00 was paid to the Landlord on January 15, 2024 for a portion of the lawful monthly rent due September 1, 2023. Additional payments were alleged to have been remitted to the Landlord, but no additional documentation was provided to substantiate these payments. Since these 3 payments were captured in the rent ledger I find based on considering all the evidence that the total rent arrears and daily compensation owing to January 31, 2024 are \$18,400.00.
7. The tenancy ended on January 31, 2024 as a result of the Tenant moving out in accordance with a notice of termination, LTB order or agreement to terminate the tenancy. Therefore, the Tenant's obligation to pay rent also ended on that date.

8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$4,500.00 from the Tenant 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.

It is ordered that:

1. The Tenant shall pay to the Landlord \$13,905.75. This amount includes rent arrears owing up to January 31, 2024 and the cost of the application, less the rent deposit and the interest owing on the rent deposit.
2. If the Tenant does not pay the Landlord the full amount owing on or before April 16, 2024, the Tenant will start to owe interest. This will be simple interest calculated from April 17, 2024 at 7.00% annually on the balance outstanding.

April 5, 2024
Date Issued



Greg Witt
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.