



Order under Section 69
Residential Tenancies Act, 2006

File Number: CEL-98754-21

In the matter of: BASEMENT UNIT, 193 MOUNTAINASH ROAD
BRAMPTON ON L6R3H1

Between: Gurdial Singh Dhillon Landlords
Jagdish Kaur Dhillon
Anoop Dhillon

and

Diane Tate-Henry

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

Aug 30, 2021

Landlord and Tenant Board

Tenant

Gurdial Singh Dhillon, Jagdish Kaur Dhillon and Anoop Dhillon (the 'Landlords') applied for an order to terminate the tenancy and evict Bianca Tate-Henry and Diane Tate-Henry (the 'Tenant') because they did not pay the rent that the Tenant owe.

This application was heard by videoconference on July 5, 2021. J. Dhillon on behalf of the Landlords and the Tenant attended the hearing. Bianca Tate-Henry was not present or represented at the hearing.

Preliminary issue:

1. Section 87 of the *Residential Tenancies Act, 2006* (the 'Act') sets certain conditions on a Landlord's ability to apply to the Board for an order for arrears of rent:

87(1) A landlord may apply to the Tribunal for an order for the payment of arrears of rent if,

(a) the tenant has not paid rent lawfully required under the tenancy agreement; and

(b) **the tenant is in possession of the rental unit.** [emphasis added]

2. Parties agreed that Bianca Tate-Henry moved out of the rental unit in January 2021. This Application was filed on February 20, 2021 after she vacated the rental unit. As she was not in possession of the rental unit, the Board lacks jurisdiction under s. 87 of the Act to order her to pay rent arrears to the Landlord. This application is amended to remove her as a party. I note however that this does not necessarily mean that the tenancy is or was lawfully terminated, and the Landlord or the Tenant may have recourse against Bianca Tate-Henry in another court of competent jurisdiction

Determinations:

1. The Tenant has not paid the total rent the Tenant was required to pay for the period from February 1, 2021 to May 10, 2021. Because of the arrears, the Landlords served a Notice of Termination effective February 17, 2021.
2. The Tenant vacated the rental unit on May 10, 2021. The Tenant was in possession of the rental unit when this application was filed.
3. The Landlord asks that rent be ordered for the period ending May 31, 2021.
4. I cannot grant the Landlord's request. Pursuant to section 134(1.1) of the *Residential Tenancies Act, 2006* (Act), a landlord may not collect or attempt to collect from a former tenant any amount purporting to be rent after the tenant's interest in the tenancy has ended. In this case, the tenancy ended on May 5, 2021 as the tenant returned vacant possession of the rental unit to the landlord after being served with a notice of termination. Also please see Board Interpretation Guideline #11 which says a landlord in this situation is only entitled to daily compensation up to the date the tenant returns vacant possession to the landlord.

Lawful monthly rent

5. I find on the balance of probabilities that the lawful monthly rent was \$1,500.00. Parties did not dispute that they signed a lease with the monthly rent of \$1,500.00. The Tenant implicitly argued, however, that she was only liable for \$750.00 a month and that she simply could not afford to pay \$1,500.00 after her daughter, Bianca Tate-Henry, vacated the rental unit.
6. I find that it is more likely than not that the Tenant and Bianca Tate-Henry occupied the rental unit as joint tenants. "Four unities" are required for a joint tenancy: unity of title, time, interest, and possession. In other words, the tenants must all take possession under the same tenancy agreement, they must have entered into the tenancy agreement at the same time, they must each take the same estate and each must take possession of the undivided whole of the premises (that is no joint tenant must exclude another joint tenant from any part of the property). (See: Fleming, Jack, *Residential Tenancies in Ontario*, 3rd ed. (Toronto: LexisNexis, 2011) at 158.).
7. In this case, I find that the Tenant and her daughter were in a joint tenancy when they moved into the unit as the necessary elements for such a tenancy were present. The Tenant and her daughter signed a the lease together, moved in at the same time, and both took possession of the entire unit. There is no evidence before me that they divided the unit into two separate entities or otherwise treated the tenancy as a tenancy in common, even if they both contributed to the monthly payment of rent.
8. In a joint tenancy, there is a single tenancy agreement and the tenants are jointly and severally (individually) liable for the payment of the entire rent for the rental unit. When one of two joint tenants moves out of the unit, the lawful monthly rent does not change.

As such, the lawful monthly rent was always \$1,500.00. The Board does not have jurisdiction to simply reduce the monthly rent if the remaining joint Tenant does not have the ability to pay the monthly rent.

9. Both parties provided evidence of their attempts to find a roommate for the Tenant and to negotiate a reduction in rent. No agreement was ultimately reached and no roommate moved into the unit. As such I am unable to find that the monthly rent ever changed nor that the nature of the tenancy ever changed.

Deposit and payments made by the Tenant

10. The Landlords collected a rent deposit of \$1,500.00 from the Tenant and this deposit is still being held by the Landlords.
11. Interest on the rent deposit is owing to the Tenant for the period from December 4, 2020 to February 17, 2021.
12. Based on the evidence presented at the hearing I find that the Tenant paid \$1,500.00 after the application was filed.

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated effective May 10, 2021, the date vacant possession was returned to the Landlord.
2. The Tenant shall pay to the Landlords \$1,882.29*, which represents the amount of rent owing and compensation up to May 10, 2021, less the rent deposit and interest the Landlords owe on the rent deposit.
3. The Tenant shall also pay to the Landlords \$186.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlords the full amount owing* on or before September 10, 2021, the Tenant will start to owe interest. This will be simple interest calculated from September 11, 2021 at 2.00% annually on the balance outstanding.

August 30, 2021
Date Issued



Vladimir Nikitin
Member, Landlord and Tenant Board

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3 Robert Speck Pkwy, 5th Floor
Mississauga ON L4Z2G5

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

* Refer to section A on the attached Summary of Calculations.

**Schedule 1
SUMMARY OF CALCULATIONS**

File Number: CEL-98754-21

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

Reasons for amount owing	Period	Amount
Arrears: (up to the termination date in the Notice of Termination)	February 1, 2021 to February 17, 2021	\$838.36
Less the amount the Tenant paid to the Landlords		-\$1,500.00
Plus compensation: (from the day after the termination date in the Notice to the date unit vacated)	February 18, 2021 to May 10, 2021	\$4,044.24
Less the rent deposit:		-\$1,500.00
Less the interest owing on the rent deposit:	December 4, 2020 to February 17, 2021	-\$0.31
Amount owing to the Landlords on the order date: (total of previous boxes)		\$1,882.29
Additional costs the Tenant must pay to the Landlords:		\$186.00
Total the Tenant must pay the Landlords as the tenancy is terminated:		\$2,068.29