



Order under Section 69
Residential Tenancies Act, 2006

File Number: TEL-12083-20

In the matter of: BASEMENT ROOM 2, 1267 WARDEN AVENUE
SCARBOROUGH ON M1R2R4

Between: Muhammad Arif Landlord

and

Alexander Marshall Tenant

Muhammad Arif (the 'Landlord') applied for an order to terminate the tenancy and evict Alexander Marshall (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes ('L1 application').

The Landlord applied for an order to terminate the tenancy and evict the Tenant because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused undue damage to the premises. The Landlord has also applied for an order requiring the Tenant to compensate the Landlord for the damage; because the Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex involving the production of an illegal drug, the trafficking in an illegal drug or the possession of an illegal drug for the purposes of trafficking; and 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. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date ('L2 application').

The Landlord also applied for an order determining whether the Tenant altered the locking system without the Landlord's consent ('L8 application').

This application was heard by videoconference on April 27, 2021. The Landlord, the Landlord's Legal Representative, Azhar Lodhi, and the Tenant attended the hearing. The Tenant spoke with Duty Counsel prior to the hearing.

Determinations:

L1 application non-payment of rent

1. The Tenant has not paid the total rent the Tenant was required to pay for the period from April 1, 2020 to December 31, 2020. Because of the arrears, the Landlord served a Notice of Termination effective June 16, 2020.

2. The Tenant is in possession of the rental unit.
3. The lawful monthly rent is \$500.00. While the Tenant argues that the lawful monthly rent is \$400.00, it is more likely that the monthly rent is \$500.00 based on the rent receipts submitted by the Landlord.
4. The Landlord is not holding a last month's rent deposit.
5. The Tenant has made no payments since the application was filed. The Tenant testified that he is not in arrears. He paid all his rent in cash but could not produce receipts at the hearing to corroborate his assertion because the Landlord did not provide him with receipts. I find the Tenants testimony to be unlikely particularly given the fact that the Landlord provided the Tenant rent receipts in the past for months that the Tenant paid the rent for.
6. As of the hearing date, the Tenant owed the Landlord \$6,251.00 in arrears of rent to April 30, 2021. The rent for May and June 2021 has since become due. Therefore, the total owing by the Tenant as of the date of this order is \$7,251.00, which includes arrears of rent to June 30, 2021 (\$7,050.00). If the Tenant made any payments to the Landlord after the hearing date, those payments should be deducted from the total owing in this order.
7. I have considered all of the disclosed circumstances in accordance with subsection 83 of the *Residential Tenancies Act, 2006* (RTA), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. While the Landlord did not attempt to negotiate a repayment agreement, I find that any negotiations would have been futile given the Tenant's position that he did not owe any arrears. The Tenant did not request or provide submissions on granting relief from eviction.

L2 application – serious impairment of safety, wilful damage, and illegal act

8. Based on all the evidence presented at the hearing, I am not satisfied that the Tenant wilfully caused undue damage to the rental unit or residential complex, nor am I satisfied that the Tenant seriously impaired the safety of other persons in the residential complex. I am also not satisfied that the Tenant committed an illegal act involving the production of an illegal drug, trafficking in an illegal drug or possession of an illegal drug for the purposes of trafficking in the rental unit or residential complex.
9. The Landlord testified that the basement has 2 units, one of which is occupied by the Tenant. He received a call from the tenant in the other unit informing him that the Tenant was waving a knife and broke the screen glass door of the main entrance. The Landlord takes the position that the Tenant's actions seriously impaired the safety of other persons in the residential complex. The Landlord submitted photos taken by the tenant of the other unit. These photos allegedly show the broken front screen door and the Tenant holding a knife.

10. The Landlord also testified that the Tenant caused a fire while barbequing in front of the garage. The fire caused damage to the garage door. The Landlord submitted pictures of the damages to the garage as well as pictures of other damage to the residential complex allegedly caused by the Tenant. The other tenant in the residential complex informed the Landlord that the damage was caused by the Tenant.
11. Finally, the Landlord testified that the Tenant is growing more than four marijuana plants in the residential complex in contravention of section 8 of the *Cannabis Act* (SC 2018, c 16). The Landlord takes the position that this constitutes the production of an illegal drug, trafficking in an illegal drug or possession of an illegal drug for the purposes of trafficking
12. The Tenant denies waiving a knife or wilfully damaging the rental unit or residential complex. According to the Tenant there were other tenants in the residential complex that could have caused the damage. With regards to the fire, the Tenant testified that it was the upstairs tenants that were using the barbeque and caused the fire that resulted in damage to the garage. The Tenant was attempting to put out the fire as the Landlord pulled up to the residential complex. With regards to the marijuana plants, the Tenant denies that the plants are his.
13. The burden of proof in civil cases is on a balance of probabilities. The Supreme Court of Canada in *F.H. v. McDougall*, 2008 SCC 53 (CanLII), at paragraph 46, held that the evidence must always be clear, convincing and cogent in order to satisfy the balance of probabilities test. In this case, the Landlord bears the onus of leading sufficient clear, convincing and cogent evidence to establish the allegations in the notices of termination.
14. The issue with the Landlord's evidence in this case was that it was entirely hearsay. The Landlord's testimony was based on information he received from the other tenant in the residential complex. The pictures presented at the hearing were taken by the other tenant in the residential complex. The other tenant was not present at the hearing to testify. Therefore, there was no opportunity to cross-examine. Accordingly, I prefer the Tenant's direct testimony over the hearsay evidence of the Landlord.
15. Since the Landlord did not lead sufficiently clear, convincing and cogent evidence, the Landlord's L2 application must be dismissed.

L8 application

16. Based on all the evidence at the hearing, I am not satisfied that the Tenant altered the locking system on a door giving entry to the rental unit or rental complex without the Landlord's consent. The locks were not changed or altered. The locks may have been damaged resulting in the Landlord not being able to access the rental unit. However, it was unclear from the evidence whether the damage was caused by the Tenant who denied changing or altering the locking system.
17. Accordingly, the L8 application must be dismissed.

It is ordered that:

1. Unless the Tenant voids the order as set out below, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before June 19, 2021.
2. The Tenant shall pay to the Landlord \$6,682.09*, which represents the amount of rent owing and compensation up to June 8, 2021.
3. The Tenant shall also pay to the Landlord \$16.44 per day for compensation for the use of the unit starting June 9, 2021 to the date the Tenant moves out of the unit.
4. The Tenant shall also pay to the Landlord \$201.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing* on or before June 19, 2021, the Tenant will start to owe interest. This will be simple interest calculated from June 20, 2021 at 2.00% annually on the balance outstanding.
6. If the unit is not vacated on or before June 19, 2021, then starting June 20, 2021, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. 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 June 20, 2021.
8. If, on or before June 19, 2021, the Tenant pays the amount of \$7,251.00** to the Landlord or to the Board in trust, this order for eviction will be void. This means that the tenancy would not be terminated and the Tenant could remain in the unit. If this payment is not made in full and on time, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. The Tenant may make a motion to the Board under subsection 74(11) of the Act to set aside this order if they pay the amount required under that subsection on or after June 20, 2021 but before the Sheriff gives vacant possession to the Landlord. The Tenant is only entitled to make this motion once during the period of the tenancy agreement with the Landlord.

June 8, 2021
Date Issued



Khalid Akram
Member, Landlord and Tenant Board

Toronto East-RO
2275 Midland Avenue, Unit 2
Toronto ON M1P3E7

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 December 20, 2021 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.

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

**Schedule 1
SUMMARY OF CALCULATIONS**

File Number: TEL-12083-20

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

Reasons for amount owing	Period	Amount
Arrears: (up to the termination date in the Notice of Termination)	April 1, 2020 to June 16, 2020	\$813.01
Plus compensation: (from the day after the termination date in the Notice to the date of the order)	June 17, 2020 to June 8, 2021	\$5,869.08
Amount owing to the Landlord on the order date: (total of previous boxes)		\$6,682.09
Additional costs the Tenant must pay to the Landlord:		\$201.00
Plus daily compensation owing for each day of occupation starting June 9, 2021:		\$16.44 (per day)
Total the Tenant must pay the Landlord if the tenancy is terminated:		\$6,883.09, + \$16.44 per day starting June 9, 2021

B. Amount the Tenant must pay to void the eviction order and continue the tenancy:

Reasons for amount owing	Period	Amount
Arrears:	April 1, 2020 to June 30, 2021	\$7,050.00
Additional costs the Tenant must pay to the Landlord:		\$201.00
Total the Tenant must pay to continue the tenancy:	On or before June 19, 2021	\$7,251.00

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