



Order under Section 69 Residential Tenancies Act, 2006

Citation: Thang v Mackenzie, 2024 ONLTB 752

Date: 2024-01-08

File Number: LTB-L-049401-23

In the matter of: 540 CLAYTON AV
PETERBOROUGH ON K9K0H8

Between: Vinh Hai Thang Landlord

And

Victoria Mackenzie, Tenant Domanic Shire

Vinh Hai Thang (the 'Landlord') applied for an order to terminate the tenancy and evict Victoria Mackenzie, Angelina Rosanne Punter, Domanic Shire and Noel Johnathan Kot (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 8, 2023.

The Landlord, the Landlord's representative Akshay Sandhir and Angelina Rosanne Punter attended the hearing. Angelina Rosanne Punter indicated she has authority to speak on behalf of Noel Johnathan Kot only.

Determinations:

1. As a preliminary matter, Angelina Rosanne Punter (AP) indicated that she and Noel Johnathan Kot (NK) are no longer Tenants and requested to be removed as a parties in this application. On February 1, 2023, AP and NK sent an email to the Landlord's agent, enclosing a Form N9, with a termination date of March 31, 2023, as well as an accompanying statement signed by AP and NK.
2. By way of background, the Landlord signed a fixed, one-year lease term commencing November 1, 2022, naming Victoria Mackenzie, Domanic Shire, AP and NK as joint tenants. AP and NK are common law spouses and at the time of entering the lease, were acquaintances of the remaining two tenants, Victoria Mackenzie and Domanic Shire.

3. AP submits that her and NK's tenancy ended in accordance with the Form N9 given. A joint tenant may only unilaterally terminate their tenancy before the end of term pursuant to section 47.1 and 47.2 of the Act when a joint tenant is deemed to have experienced violence or another form of abuse. Here, AP and NK did not serve a Form N15 but did serve a Form N9 and an accompanying "statement" upon the Landlord's agent on February 1, 2023, and vacated the rental unit in accordance with the notice served. I am satisfied the documentation accompanying the Form N9 is a "statement" referred to in 47.3(1)(f) of the Act, thus entitling AP and NK to be removed as parties in this application pursuant to sections 47.1 and 47.2. I have accordingly removed AP and NK as tenants in this application.
4. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant 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.
5. As of the hearing date, the Tenant was still in possession of the rental unit.
6. The lawful rent is \$3,175.00. It is due on the 1st day of each month.
7. Based on the Monthly rent, the daily rent/compensation is \$104.38. This amount is calculated as follows: $\$3,175.00 \times 12$, divided by 365 days.
8. The Tenant has paid \$16,850.00 to the Landlord since the application was filed.
9. The rent arrears owing to November 30, 2023 are \$2,200.00.
10. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. The Landlord collected a rent deposit of \$3,175.00 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.
12. Interest on the rent deposit, in the amount of \$81.33 is owing to the Tenant for the period from October 31, 2022 to November 8, 2023.

Section 83

13. Section 83 requires that I consider all the circumstances, including the Tenant's and the Landlord's situations to determine if it would be appropriate to grant section 83 relief from eviction.
14. The Landlord's representative advised that the Landlord has tried to reach out to the Tenant for a repayment plan, without success. AP and NK are no longer residing at the rental unit. The remaining tenants under the lease did not attend the hearing, and thus did not provide any evidence that may be relevant to my determination under s. 83

15. I have considered all of the disclosed circumstances in accordance with subsection 83 of the *Residential Tenancies Act, 2006* (RTA), including 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.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$8,736.00 if the payment is made on or before January 31, 2024. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after January 31, 2024 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before January 31, 2024**
5. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the arrears of rent, compensation and the cost of filing the application the Landlord is entitled to by \$3,210.29. See Schedule 1 for the calculation of the amount owing. However, the Landlord is authorized to deduct from the amount owing to the Tenant \$104.38 per day for compensation for the use of the unit starting November 9, 2023 until the date the Tenant moves out of the unit.
6. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
7. If the unit is not vacated on or before January 31, 2024, then starting February 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 February 1, 2024.

January 8, 2024

Date Issued

Peter Nicholson

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 August 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before January 31, 2024

Rent Owing To January 31, 2024	\$25,400.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$16,850.00
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	\$8,736.00

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

Rent Owing To Hearing Date	\$16,710.04
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$16,850.00
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	- \$3,175.00
Less the amount of the interest on the last month's rent deposit	- \$81.33
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	\$(3,210.29)
Plus daily compensation owing for each day of occupation starting November 9, 2023	\$104.38 (per day)

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