



Order under Section 69 Residential Tenancies Act, 2006

Citation: Akhondi v Salehi, 2024 ONLTB 6874

Date: 2024-02-21

File Number: LTB-L-049252-23

In the matter of: MAIN FLOOR, 109 DON MOR DR NEWMARKET
ON L3Y1G9

Between: Mehrangiz Akhondi Landlords
Farzin Najafi

And

Siamak Salehi Alyeh Mirzae

Tenants

Mehrangiz Akhondi and Farzin Najafi (the 'Landlords') applied for an order to terminate the tenancy and evict Siamak Salehi and Alyeh Mirzae (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on November 7, 2023.

The Landlords, the Landlords' Legal Representative, A. Golabgir, the Landlords Interpreter, H. Shams, the Tenants' Legal Representative, S. Shojaie, and the Tenants attended the hearing.

Determinations:

Preliminary Issue – Lease Agreement

1. At the start of the hearing, the parties raised a preliminary matter regarding the terms of the lease agreement. Specifically, the parties were seeking a determination about what part of the residential complex constitutes the rental unit. The parties have different positions about what they agreed to in the lease regarding what part of the residential complex the Tenants were entitled to occupy. This may be relevant in my determination of the validity of the N4 notice of Termination as it must accurately identify the rental unit for which is is given, pursuant to section 43 of the *Residential Tenancies Act, 2006*, (the 'Act').

2. The rental property in question is a house with 2 residential units, one on the main floor, and a separate unit in the basement. It is the Tenants' position that they signed a lease agreement to rent the entirety of the house, including both the main floor and basement units.
3. The parties agree that the Tenants entered into a lease agreement on or about August 6, 2022. The parties also agree that when the Tenants signed the lease and moved into the rental unit, there was another tenant occupying the basement unit.
4. The Landlords submitted the lease agreement for the basement unit which commenced July 10, 2022, for a term of one year. The rent for the basement unit was \$1,500.00 per month.
5. The Tenants testified that they were told upon signing the lease that the tenant in the basement unit would be moving out within a couple weeks and they would have access to the basement unit for their daughter to live in.
6. Additionally, the Tenants testified that they believed their rent of \$3,100.00 per month was for the right to occupy the entire house. The Tenants also testified that they were told the tenant in the basement would pay their rent directly to the Tenants on the main floor unit until they vacated.
7. The Landlords testified that the lease agreement did not specify the rental unit as the "Main Floor" as they felt it was obvious which unit the Tenants were renting, as the basement unit was already rented with another tenant living there. The lease agreement also stated that the Tenants would be responsible for 2/3 of the utility costs while the basement unit would be responsible for 1/3 of the costs. It is the Landlords' position that the Tenants were aware they were only renting the main floor unit.
8. The Landlords stated that at no time did they ever say the basement tenant was to pay their rent to the main floor Tenants. They did testify, however, that the basement tenant was to pay their share of the utilities directly to the main floor Tenants as they were to put the utility bills in their name.
9. It is also the Landlords' position that they had a good relationship with the basement unit tenant and had no intention of removing them so that the Tenants could have the entire house.
10. The parties both provided their copies of the lease agreement. The Landlords' copy showed some handwritten notes regarding the condition of the appliances in the unit, that utilities were split with the downstairs tenant, and information about grass and snow responsibilities. The Landlords' copy of the original lease agreement also had a blank space on the back of the page.
11. The Tenants' copy of the lease agreement was effectively the same except for an additional handwritten passage on the back of the lease agreement, where it was blank on the Landlords' copy. This handwritten passage stated that the Tenants would take over the

basement unit for their daughter, upon that tenant vacating. The Tenants' copy also had the bottom portion of the agreement cut off.

12. It was the Tenants position that the Landlords took their lease, wrote that additional passage on it and returned it to the Tenants.
13. The Landlords stated that they never wrote that on their lease. They testified that prior to receiving the Tenants' evidence, they had not seen that before. It was the Landlords' position that the Tenants fraudulently wrote on the back of the lease agreement and forged a signature on behalf of the Landlords.
14. Based on the testimony provided by both parties, I find the Landlords' testimony to be more credible, on a balance of probabilities, than that of the Tenants.
15. The Tenants relied on a lease agreement which appeared to have been altered to add additional information, which the Landlords dispute were ever in agreement at the time of signing. Additionally, I find that the Tenants altered lease agreement, which they showed on video to the Board, had a bottom section cut off, which in the Landlords' copy showed the break down of utility payments between the two units, and had additional writing that stated the Tenants were renting both units as one.
16. Based on the evidence and submissions by both parties, I am satisfied that the N4 Notice of Termination accurately identifies the rental unit as consisting of the main floor only, and therefore, the notice is valid. As such, I proceeded to hear the merits of the application on that basis.

Non-Payment of Rent

17. The Landlords served the Tenants with a valid Notice to End Tenancy Early for Nonpayment 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.
18. As of the hearing date, the Tenants were still in possession of the rental unit.
19. The lawful rent is \$3,100.00. It is due on the 6th day of each month.
20. Based on the Monthly rent, the daily rent/compensation is \$101.92. This amount is calculated as follows: \$3,100.00 x 12, divided by 365 days.
21. The Tenants have not made any payments since the application was filed.
22. The rent arrears owing to December 5, 2023, are \$33,000.00.
23. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
24. The Landlords collected a rent deposit of \$3,100.00 from the Tenants and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.

Section 83

25. Section 83 requires that I consider all the circumstances disclosed by the parties to determine if it would be appropriate to grant relief from eviction.
26. The Tenants testified that they stopped paying the rent for a couple reasons. Firstly, they believed the Landlords owed them money for the basement tenant's rent while they were still occupying the lower unit. The Tenants testified that the Landlords told them the basement tenant would pay their rent directly to the Tenants. Based on the submissions by both parties, I find that the Tenants confused the utility payment agreement with rent payments.
27. Additionally, the Tenants testified that they stopped paying their rent as their daughter, who according to the Tenants was supposed to move into the basement and help them pay the rent, was forced to move out and find a place of her own. As their daughter had to pay her own rent of \$1,700.00 a month, she was unable to help the Tenants cover their rent.
28. Through their testimony, the Tenants indicated they had a combined income of \$2,000.00 a month and could not afford to pay the Landlords the \$3,100.00 a month for rent.
29. The Landlords' representative advised that the Landlords are individuals and not a corporation. The ongoing arrears have affected them significantly and caused financial burdens.
30. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. Based on the submissions of both parties, I find it appropriate to deny relief from eviction as the Tenants cannot afford the rent. If the tenancy were to continue, I find it would be more likely than not that the arrears will increase.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlords or to the LTB in trust:**
 - \$42,486.00 if the payment is made on or before March 3, 2024. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants has paid the full amount owing as ordered plus any additional rent that became due after March 3, 2024, but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.

4. **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 3, 2024**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$27,108.71. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlords owe on the rent deposit are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlords compensation of \$101.92 per day for the use of the unit starting November 8, 2023, until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlords the full amount owing on or before March 3, 2024, the Tenants will start to owe interest. This will be simple interest calculated from March 4, 2024, at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before March 3, 2024, then starting March 4, 2024, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after March 4, 2024.

2024 ONLTB 6874 (CanLII)

February 21, 2024

Date Issued

Kevin O'Brien

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 4, 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before March 3, 2024

Rent Owing To March 5, 2024	\$42,300.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Total the Tenants must pay to continue the tenancy	\$42,486.00

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

Rent Owing To Hearing Date	\$30,103.84
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$3,100.00
Less the amount of the interest on the last month's rent deposit	- \$81.13
Total amount owing to the Landlords	\$27,108.71
Plus daily compensation owing for each day of occupation starting November 8, 2023	\$101.92 (per day)

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