



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Roy v Hussein, 2024 ONLTB 7312

Date: 2024-01-30

File Number: LTB-L-038434-23

In the matter of: 515 MILLARS SOUND WAY
OTTAWA ON K2J3V4

Between: Chowdhury Amalendu Roy Landlord

and

Muna Hussein
Ahmednur Ismail Tenants

Chowdhury amalendu Roy (the 'Landlord') applied for an order to terminate the tenancy and evict Muna Hussein and Ahmednur Ismail (the 'Tenants') because the Tenants have been persistently late in paying the Tenants' rent.

The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on January 17, 2024.

Only the Landlord's Legal Representative, Sikandar Arora, and the Landlord, Chowdhury Amalendu Roy, attended the hearing.

As of 10:03am, the Tenants were not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

Preliminary Issue – Amending the Application

1. At the hearing, the Landlord's Legal Representative submitted that the application had been amended to include a claim for unpaid utilities.

2. The relevant parts of Rule 15 of the Board's *Rules of Procedure* state the following:

- 15.1 A request to amend an application before the hearing must be: a. in writing;
b. served with the amended application to all other parties; and
c. filed with LTB with the amended application and a completed Certificate of Service.

15.3 The request to amend will be decided at the hearing after considering:

- a. whether the amendment was requested as soon as the need for it was known;
b. any prejudice a party may experience as a result of the amendment;
c. whether the amendment is significant enough to warrant any delay that may be caused by the amendment;
d. whether the amendment is necessary and was requested in good faith; and
e. any other relevant factors.

15.4 The LTB may exercise its discretion to grant a request to amend made at the hearing if satisfied the amendment is appropriate, would not prejudice any party and is consistent with a fair and expeditious proceeding.

3. Rule 15.3 specifically requires that a Board Member consider and then grant or deny any requested amendments. The Landlord did not make their request to amend the application in writing to the Board nor did he file a completed Certificate of Service, as required under Rule 15.1.
4. Amendments are intended to correct an error, not include new issues that were not included in the original application or occurred after the original application was filed. In my view, an amendment to include new issues that were not included in the original application and did not form the basis of the original application is an improper attempt to circumvent the established process in which parties advance their claims before the Board.
5. As a result of all of the above, I denied the Landlord's request to amend the application.

N8 Notice

6. For the reasons that follow, I am satisfied on a balance of probabilities that the Tenants persistently paid their rent late. The tenancy is terminated on February 10, 2024.
7. The Tenants were in possession of the rental unit on the date the application was filed.
8. The rent is \$2,020.00 and is due on the first day of the month.

9. On April 21, 2023, the Landlord served the Tenants an N8 notice of termination alleging that the Tenants have persistently failed to pay the rent on the date it was due. The termination date on the N8 notice is June 30, 2023.
10. The Landlord's schedule of payments shows that from January 1, 2022 to April 1, 2023, the period included on the N8 notice, the Tenants paid the rent fourteen out of sixteen months.
11. Based on the Landlord's uncontested evidence, I find that the Tenants have persistently paid the rent late.
12. Since the N8 has been served, the Tenants have ceased making any rent payments.
13. Based on the Monthly rent, the daily compensation is \$82.01. This amount is calculated as follows: \$2,494.58 x 12, divided by 365 days.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The Landlord collected a rent deposit of \$2,465.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$27.07 is owing to the Tenants for the period from January 1, 2022 to August 8, 2023.
16. In accordance with section 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

Section 83

17. Having considered all of the disclosed circumstances in accordance with section 83(2) of the Act, I find that it would be unfair to grant relief from eviction pursuant to section 83(1) of the Act. The Tenants ceased making any rent payments after the N8 notice was served and the Landlord filed this application.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before **February 10, 2024**.
2. If the unit is not vacated on or before February 10, 2024, then starting February 11, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. 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 11, 2024.
4. The Tenants shall pay to the Landlord \$13,348.60, which represents compensation for the use of the unit from July 1, 2023 to January 17, 2024.
5. The Tenants shall also pay the Landlord compensation of **\$66.41** per day for the use of the unit starting January 18, 2024 until the date the Tenants move out of the unit.

6. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. The Landlord owes \$2,137.49 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenants.
8. The total amount the Tenants owe the Landlord is **\$11,397.11**.
9. If the Tenants do not pay the Landlord the full amount owing on or before February 10, 2024, the Tenants will start to owe interest. This will be simple interest calculated from February 11, 2024 at 7.00% annually on the balance outstanding.

January 30, 2024

Date Issued

Candace Aboussafy

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 of the Tenant expires on August 11, 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.