



Order under Section 69 Residential Tenancies Act, 2006

Citation: Bhakri v Ahlers, 2023 ONLTB 77172

Date: 2023-11-20

File Number: LTB-L-041127-22

In the matter of: Upper Level, 7154A AIRPORT RD
MISSISSAUGA ON L4T2H1

Between: Dharmvir Bhakri and Bharti Bhakri Landlords

And

Melissa Ahlers

Tenant

Dharmvir Bhakri and Bharti Bhakri (the 'Landlords') applied for an order to terminate the tenancy and evict Melissa Ahlers (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes(N4). In addition, the Landlords applied for an order to terminate the tenancy and evict the Tenant because the Landlords want to demolish the rental unit, repair it, or convert it to another use(N13).

This application was heard by videoconference on May 18, 2023.

The Landlord's representative Richard Bowers, the Landlord Dharmvir Bhakri and the Tenant attended the hearing.

L2 application

Determinations:

1. The Landlords served the Tenant with a valid Notice to End Tenancy to Demolish the Rental Unit, repair it, or convert it to another use (N13 notice).
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The Landlord representative provided sufficient evidence to establish the Tenant was provided with proper compensation under Section 52(2) of *the Residential Tenancy Act, 2006* (the 'Act').
4. The Landlords L2 application (N13) was based on *Reason 2: requires the rental unit to be vacant in order to do repairs or renovations so extensive that I am required to get a building permit and the rental unit must be vacant to do the work.*

5. The Landlords application contained no evidence of building permits, no evidence that building permits would be required or demonstrated they made any attempts at obtaining proper building permits that were required for renovations so extensive. The Tenant also testified they did not believe any of these renovations would occur.
6. Under section 50(1)(c) of the Act, *A landlord may give notice of termination of a tenancy if the landlord requires possession of the rental unit in order to: do repairs or renovations to it that are so extensive that they **require a building permit** and vacant possession of the rental unit.*
7. As per paragraph 5 and 6, I find the Landlords to not be in compliance with the Act to merit a threshold of a termination of tenancy and thus the L2 portion of this application is dismissed.

L1 application

Determinations:

1. The Landlords served the Tenant 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$950.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$31.23. This amount is calculated as follows: \$950.00 x 12, divided by 365 days.
5. The Tenant received \$950.00 in compensation as part of the Landlord's L2 portion of this application. The \$950.00 was the equivalent of the lawful monthly rent for November 2022 as supported by the Landlord's evidence.
6. As the L2 portion of this application has been dismissed, I find the Tenant is not entitled to become unjustly enriched from this compensation. Therefore, the Tenant is now responsible to pay the lawful monthly rent for the month of November 2022.
7. The rent arrears owing to May 31, 2023 are \$11,400.00.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord or previous Landlord collected a rent deposit of \$2,150.00 from the Tenant and thus 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.
10. The Tenant submitted and provided evidence of a \$2,150.00 security deposit. On the balance of probabilities, I find the Tenant this security deposit existed and would have or

should have been included in the transfer of sale of the property. The Tenant is not responsible for the last month rent deposit to be transferred over to a new owner.

11. Interest on the entire rent deposit, in the amount of \$46.13 is owing to the Tenant for the period from January 1, 2021 to May 18, 2023.

Section 82

Rental Receipts

12. The Tenant claimed they have not received any rental receipts for rental payments they have made. The Tenant is seeking \$500.00 in rental abatement for not receiving rental receipts.
13. The current amount of rental arrears outstanding are significant. The Tenant was in significant arrears when the application was filed, and the Tenant has made no rental payments since the application was filed. Under these circumstances, I find it inappropriate to award a rental abatement to the Tenant.
14. The Landlords will provide rental receipts to the Tenant as per section 109(1) of the Act.

Last Month Rent Deposit

15. As per paragraph 9 and 10 of the L1 portion of this application, the Landlords are legally responsible for the last month rent deposit in the amount of \$2,150.00
16. Under section 106 (2) of the Act, *The amount of a rent deposit shall not be more than the lesser of the amount of rent for one rent period and the amount of rent for one month.*
17. As per paragraph 3 of the L1 portion of this order, the lawful monthly rent is \$950.00.
18. The Tenant is entitled to \$1,200.00 in rental credit. This amount is the surplus amount of the security deposit of one month's rent currently being held by the Landlords.

Interest on Last Month Rent Deposit

19. The Landlords are responsible for interest on the last month rent deposit from January 1, 2021 up until the date of the hearing.
20. Submitted in the Tenant's own evidence is a document showing interest has been paid up to December 31, 2020. This is the same evidence relied upon confirming the amount of the \$2,150.00 security deposit (last month rent deposit).
21. As per paragraph 11 of the L1 application of this order, the amount of interest owing on the last month rent deposit is \$46.13. This amount is applied to the outstanding money owed should the tenancy be terminated.
22. Should the Tenant choose to pay all the outstanding rental arrears to preserve the tenancy, the Tenant would be entitled to a credit of \$25.80. This amount is the amount of interest owing to the Tenant up to December 31, 2022.

Stove Element

23. The Tenant is claiming \$51.92 in abatement of rent for replacing a stove element.

24. The Landlord's representative on behalf of the Landlords has consented and acknowledged that the Tenant had paid for and has replaced the stove element.

25. The Tenant is entitled to an abatement of \$51.92.

26. 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 Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. I have considered the impact that eviction will have on the Tenant. However, I find the arrears are substantial, the Tenant has made no payments since the application was filed and they do not appear to be able to pay the monthly rent as it falls due. In addition, the Tenant has had a significant amount of time since the date of the hearing to pay back the arrears should a 6-month payment plan have been ordered.

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:**
 - \$16,008.28 if the payment is made on or before November 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$16,958.28 if the payment is made on or before December 1, 2023. 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 December 1, 2023 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 December 1, 2023**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$6,753.97. 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 Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.

6. The Tenant shall also pay the Landlord compensation of \$31.23 per day for the use of the unit starting May 19, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before December 1, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 2, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 1, 2023, then starting December 2, 2023, the Landlord 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 Landlord on or after December 2, 2023.

November 20, 2023

Date Issued

André-Paul Baillargeon-Smith

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 June 2, 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 November 30, 2023

Rent Owing To November 30, 2023	\$17,100.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid since the hearing	- \$unknown
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$51.92
Less the amount of the credit that the Tenant is entitled to	- \$1,225.80
Total the Tenant must pay to continue the tenancy	\$16,008.28

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 1, 2023

Rent Owing To December 31, 2023	\$18,050.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid since the hearing	- \$unknown
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$51.92
Less the amount of the credit that the Tenant is entitled to	- \$1,225.80
Total the Tenant must pay to continue the tenancy	\$16,958.28

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

Rent Owing To Hearing Date	\$8,816.02
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid since the hearing	- \$unknown
Less the amount of the last month's rent deposit	- \$950.00
Less the amount of the interest on the last month's rent deposit	- \$46.13
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$51.92

Less the amount of the credit that the Tenant is entitled to	- \$1,200.00
Total amount owing to the Landlord	\$6,753.97
Plus daily compensation owing for each day of occupation starting May 19, 2023	\$31.23 (per day)