



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

Citation: Daniels Humber River Corporation v Morris, 2023 ONLTB 71294

Date: 2023-11-09

File Number: LTB-L-019408-23

In the matter of: 401, 130 CANON JACKSON DR
YORK ON M6M0B7

Between: Daniels Humber River Corporation Landlord

And

Allison Monique Morris Tenant

Daniels Humber River Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Allison Monique Morris (the 'Tenant') because the tenancy was entered into as a result of an agreement to purchase the condominium unit and the agreement has been terminated.

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

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

The Landlord's Agent Sabrina Singh, the Landlord's Legal Representatives Roman Komarov and Douglas Levitt, and the Tenant attended the hearing.

Tenant's Preliminary Issues:

1. The Tenant raised a number of preliminary issues after the Board had already commenced the hearing and heard the Landlord's evidence.
2. The first issue pertained to the Certificate of Service filed in the Tribunals Ontario Portal by the Landlord. The Certificate of Service filed related to a different tenant, and as such the Landlord was asked whether the Tenant in this matter, Ms. Morris, was in fact served properly. The Tenant and the Landlord agreed she received the N8 Notice of Termination on March 1, 2023 by it being placed under the door of the rental unit. As such, I permitted the Landlord's Legal Representative who had served the original notice, to file a copy of the correct Certificate of Service so that the Board's records would be complete.

3. The Tenant also stated that she received two different Notices of Hearing from the Board, one indicating that she was to attend the hearing on October 18, 2023, and another indicating that her hearing would be taking place later in the Fall. Based on a quick review of the second application during the hearing, it appeared to be a duplicate filing of the application in this matter, and the Landlord's Legal Representative Roman Komarov acknowledged it was in fact a duplicate application. As the Tenant had sufficient notice of the hearing scheduled for October 18, 2023 by having received the NOH package from the Board on August 9, 2023 by mail, I determined that it was appropriate to continue the hearing as opposed to adjourning the remainder of it to another day.
4. The Tenant also testified that some of the evidence filed by the Landlord in their disclosure did not relate to her unit, and that an inspection report submitted into evidence did not pertain to her condo. As this evidence was not being relied upon by the Landlord, and it is not relevant to this application, that is struck from the record.
5. The Tenant, after having heard the Landlord present their case, also asked for permission to make an in-hearing submission of her own evidence, and she asked to rely on documentation which was filed by the Landlord. Given that the Tenant was not disputing the grounds of the application and that I felt she had sufficient notice of the hearing, her request to file evidence late was denied.

Agreed Upon Facts:

6. The parties agreed that the Tenant breached the Agreement of Purchase and Sale of the condominium, that the Landlord had grounds to terminate the interim occupancy agreement as a result, and that the Tenant owed daily compensation to the Landlord from May 1, 2023 to the date of the hearing.

Determinations:

7. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated, and the Tenant owes daily compensation from after the termination date.
8. The Tenant was in possession of the rental unit on the date the application was filed.
9. The Tenant was in possession of the rental unit as of the hearing date.
10. On March 1, 2023, the Landlord gave the Tenant an N8 notice of termination deemed served on March 1, 2023. The notice of termination contains the following allegations: That the Tenant entered into an interim occupancy agreement pursuant to having signed an Agreement of Purchase and Sale, which allowed her use of the unit until the closing date pending completion of that sale, and that on or around Feb 3, 2023, the Tenant defaulted on the terms of the agreement.

11. The Agreement of Purchase and Sale was originally signed on September 9, 2020 with the closing date having been extended numerous times, with a final closing date of February 3, 2023.

Tenancy arose out of agreement to sell condo, which was terminated:

12. The tenancy arose out of an agreement of a purchase and sale of a condominium unit in good faith and the agreement has been terminated.

Daily compensation, rent deposit:

13. The Tenant was required to pay the Landlord \$12,212.38 in daily compensation for use and occupation of the rental unit for the period from May 1, 2023 to October 18, 2023.
14. Based on the Monthly rent, the daily compensation is \$71.42. This amount is calculated as follows: \$2,172.28 x 12, divided by 365 days.
15. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
16. There is no last month's rent deposit.

Relief from Eviction:

17. When asked if they were aware of any circumstances which would warrant a delay or denial of an eviction, the Landlord's Legal Representatives indicated that they were not aware of any. In addition, the Landlord's Agent stated that the Landlord has suffered financial loss as a result of the breach due to the fact that the unit is now considered a resell unit as opposed to a brand-new unoccupied condominium, and that they cannot sell the unit while the Tenant is occupying it.
18. As mentioned under the "preliminary issues" section of this order, the Tenant appeared to want to enter evidence as an in-hearing submission in order to demonstrate the degree of financial loss that either party may have suffered, as well as emails which would demonstrate the context behind her breach. I reminded the Tenant that the legal test to be met in this case is whether an agreement of purchase and sale had been terminated, and that as such an interim occupancy agreement should come to an end, resulting in an eviction. I indicated that I would not be making a finding as to the quantum of financial loss or gain which may or may not have resulted from her breach. This is in part why the Tenant's request to file evidence late was denied, as I did not feel that evidence beyond her verbal submissions as to her section 83 circumstances were necessary. In terms of relevant circumstances, the Tenant stated that she has a young daughter living with her in the unit, and that finding a comparable unit to rent given the current market conditions would be very challenging.

19. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

20. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before November 20, 2023.
21. If the unit is not vacated on or before November 20, 2023, then starting November 21, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
22. 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 November 21, 2023.

23. The Tenant shall pay to the Landlord \$12,212.38, which represents compensation for the use of the unit from May 1, 2023 to October 18, 2023.
24. The Tenant shall also pay the Landlord compensation of \$71.42 per day for the use of the unit starting October 19, 2023 until the date the Tenant moves out of the unit.
25. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
26. The total amount the Tenant owes the Landlord is \$12,398.38.
27. If the Tenant does not pay the Landlord the full amount owing on or before November 20, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 21, 2023 at 7.00% annually on the balance outstanding.

November 9, 2023
Date Issued

Madeline Ntoukas
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 May 21, 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.