



Order under Section 69 Residential Tenancies Act, 2006

Citation: Yazdani v Boast, 2023 ONLTB 59205

Date: 2023-09-01

File Number: LTB-L-010850-23

In the matter of: B, 172 ALICE ST
VANIER ON K1L7X3

Between: Ramin Yazdani Landlords
Peyman Yazdani

And

Avery Boast Tenants
Adam Boast

Ramin Yazdani and Peyman Yazdani (the 'Landlords') applied for an order to terminate the tenancy and evict Avery Boast and Adam Boast (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on July 4, 2023.

The Landlords and the Tenants attended the hearing.

The Landlords and the Landlords' representative, Sherri Yazdani and the Tenants attended the hearing.

Determinations:

Nature of the tenancy

1. The tenancy commenced around August 2021. There were (2) tenants named on the lease, Adam Boast and Avery Boast. In or around September 2022, Adam Boast vacated the rental unit. He did not provide notice to the Landlord of his intent to vacated. In December 2022, Adam Boast advised his Landlords that he had vacated the rental unit. The Landlord did not agree to the termination of the tenancy. Adam Boast disputes the monthly rent as he has not lived at the rental unit since September 2022.
2. The Tenant, Adam Boast is currently employed at JR Lawn and Snow. He testified that he would not be able to put any money towards the repayment of arrears as he currently lives elsewhere and has financial obligations at his current place of residence.
3. After Adam Boast vacated the rental unit, the remaining Tenant, Avery Boast attempted to pay the full amount of the monthly rent. Avery Boast testified that he lost his job in November 2022 and was not employed again until March 2023. He was looking for work however he

was unable to pay the rent. He is currently employed at JR Lawn and Snow and is now able to pay the rent ongoing.

Joint Tenancy

4. In a joint tenancy, all of the tenants share a single, undivided interest in the tenancy. There is a single tenancy agreement and all of the Tenants are jointly and severally liable for the payment of the entire rent of the rental unit.
5. In the context of the Act, a more important feature of joint tenancy is that co-tenants do not have separate shares of the rent. They are jointly and severally liable to the Landlords for the entire rent, meaning that if the rent is not paid, the Landlords may pursue any of them for the full amount.
6. Since a joint tenancy is undivided, there is no obvious way under the Act or common law to terminate one tenant's interest in it. In the present case, based on the evidence before me, the tenant, Adam Boast vacated the rental unit in September 2022. There was no agreement made with the Landlord. Avery Boast the remaining Tenant did not agree to vacate, but rather he chose to stay. I don't find that in these circumstances there was a clear agreement amongst all the parties to convert this joint tenancy to a tenancy in common.
7. When the Landlord filed the L1 application, Adam Boast was no longer in possession of the rental unit, meaning they cannot be named as a Respondent in the application. The remaining Tenant Avery Boast chose to stay remain in the rental unit in these circumstances, thereby assuming liability the entirety of the monthly rent of \$1,383.00.
8. Therefore, as Adam Boast was not properly removed from the lease, his portion of the tenancy was not terminated and he remains liable under the terms of the tenancy until such time as the proper steps are taken to terminate his interest. I find that since the tenancy was not terminated in accordance with the Act, both Tenants are joint and severally liable for the rent under the terms of the lease agreement.
9. The Landlords served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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.
10. As of the hearing date, the Tenants were still in possession of the rental unit.
11. The lawful rent is \$1,383.00. It is due on the 1st day of each month.
12. Based on the Monthly rent, the daily rent/compensation is \$45.47. This amount is calculated as follows: $\$1,383.00 \times 12$, divided by 365 days.
13. The Tenants have paid \$675.00 to the Landlords since the application was filed.
14. The rent arrears owing to July 31, 2023 are \$9,049.00.

15. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
16. The Landlords collected a rent deposit of \$1,350.00 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.
17. Interest on the rent deposit, in the amount of \$45.79 is owing to the Tenants for the period from August 19, 2021 to July 4, 2023.

Relief from Eviction

18. 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 not be unfair to postpone the eviction until September 30, 2023 pursuant to subsection 83(1)(b) of the Act.
19. The Landlord's representative testified that they attempted to communicate with the Tenants regarding a repayment of the arrears. The Landlord received a payment of \$675.00 toward the arrears from Avery Boast on March 1, 2023. The Landlord has not received any other payments from the Tenants since March 2023. I am satisfied the Landlord met their obligation to attempt to negotiate a repayment plan with the Tenant.
20. The Landlord sought an eviction order with eviction based on the arrears of rent. The arrears were described as substantial with one good faith payments made by the Tenants since the application was filed.
21. The Tenant, Avery Boast would like the opportunity to repay the arrears. He has been steadily employed for the last 3 months. He testified that he currently makes \$2,800.00 per months and his monthly expenses including the monthly rent total \$2,481.00.
22. The Tenants circumstances differ in that Avery Boast still resides at the rental unit however, Adam Boast had vacated without notice to the Landlord as of September 2022. Avery Boast does not dispute the arrears and would like to preserve the tenancy and avoid eviction. However, Adam Boast, disputes that the amount of arrears.
23. At this time, I find it would be unfair to grant a conditional order for repayment as Tenants requested. There are substantial rent arrears owing with no realistic plan for how to pay it back. Therefore, I find there is no realistic way to impose a payment plan since there is no evidence supporting how any repayment plan could be satisfied.
24. I do however find that 30-day delay is fair in the circumstances, so the Tenants can arrange their affairs and move, or pay off the arrears and void the eviction order if they are able.

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:**
 - \$12,001.00 if the payment is made on or before September 30, 2023. 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 have paid the full amount owing as ordered plus any additional rent that became due after September 30, 2023 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 September 30, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$6,638.09. 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 owes 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 \$45.47 per day for the use of the unit starting July 5, 2023 until the date the Tenants moves out of the unit.
7. If the Tenants do not pay the Landlords the full amount owing on or before September 30, 2023, the Tenants will start to owe interest. This will be simple interest calculated from October 1, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before September 30, 2023, then starting October 1, 2023, 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 October 1, 2023.

September 1, 2023
Date Issued

 Camille Clyne
 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 March 13, 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 September 12, 2023

Rent Owing To September 30, 2023	\$12,490.00
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$675.00
Total the Tenants must pay to continue the tenancy	\$12,001.00

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

Rent Owing To Hearing Date	\$8,522.88
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$675.00
Less the amount of the last month's rent deposit	- \$1,350.00
Less the amount of the interest on the last month's rent deposit	- \$45.79
Total amount owing to the Landlords	\$6,638.09
Plus daily compensation owing for each day of occupation starting July 5, 2023	\$45.47 (per day)