



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

Citation: Kassay v Watson, 2023 ONLTB 57502

Date: 2023-08-18

File Number: LTB-L-017280-23

In the matter of: Basement, 47 Jade Crescent
BRAMPTON ON L6S3G9

Between: Meskerem Endeshaw Kassay Landlord

And

Omar Watson and Melissa John Tenants

Meskerem Endeshaw Kassay (the 'Landlord') applied for an order to terminate the tenancy and evict Omar Watson and Melissa John (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

Procedural History:

1. This matter was first before me on July 5, 2023 at 9:00 a.m. Only the Landlord attended the hearing. The Landlord advised that there was a fire at the rental unit on June 2, 2023 resulting in the death of Tenant Melissa John and Tenant Omar Watson's hospitalization. The Landlord had attempted to contact Tenant Omar Watson for an update as she was unsure whether he was still in hospital. Given the circumstances, the matter was adjourned so that the Landlord could make efforts to contact Tenant Omar Watson.
2. This application was heard by videoconference on August 14, 2023. Only the Landlord attended the hearing. As of 9:30 a.m., Tenant Omar Watson was 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:

1. On June 2, 2023, a fire occurred at the rental unit. Tenant Melissa John died in the fire. Tenant Omar Watson was taken to hospital and has not returned to the rental unit since

the fire. The Landlord has not received any communication from Tenant Omar Watson despite numerous emails requesting an update. The Landlord does not have any information about friends or family members of the Tenants who might be able to provide information about the whereabouts of Omar Watson.

2. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment 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.
3. The Tenants were in possession of the rental unit on the date the application was filed. The Tenants' belongings are still in the rental unit and the keys have not been returned to the Landlord.
4. It was the uncontested evidence of the Landlord that the fire on June 2, 2023 rendered the unit uninhabitable. According to the Landlord, the living and kitchen area were damaged beyond recognition. The other areas of the rental unit sustained substantial smoke and water damage. As of the time of the hearing, the fire is still under investigation.

Has the original tenancy agreement been frustrated?

5. Section 19 of the *Residential Tenancies Act, 2006* (the 'Act') provides that the doctrine of frustration of contract and the *Frustrated Contracts Act* apply with respect to tenancy agreements.
6. Section 3 of the *Frustrated Contracts Act* states:

The sums paid or payable to a party in pursuance of a contract before the parties were discharged,

 - (a) in the case of sums paid, are recoverable from the party as money received for the use of the party by whom the sums were paid; and
 - (b) in the case of sums payable, cease to be payable.
7. What this means is that where a tenancy agreement is frustrated, the agreement to pay rent in return for the right to occupy the rental unit is over. Any rent paid for the postfrustration period is refundable to the tenant, who owes no further rent.
8. In *Barnaby v. Salamander Opportunities et al*, 2018 ONSC 5749, the Divisional Court conformed that for the doctrine of frustration, each of the following must be met:

- First, an unexpected event that was not contemplated in the contract or foreseeable must occur.
 - Second, the unexpected event cannot be self-induced or the fault of one of the parties
 - Third, the event must drastically change the nature of the contract so that it is impossible (not just difficult or expensive) to perform the obligations under the contract. The impossibility of performance must be of a long-term nature and not temporary or transient.
9. Based on the uncontested evidence before me, I find that the tenancy agreement was frustrated by the fire that took place on June 2, 2023. The fire was unexpected by the parties. Given the extent of the damage, the resumption of the tenancy would be significantly protracted and not reasonably foreseeable. The seriousness of the fire made the terms of the tenancy agreement impossible to perform. There is no evidence suggesting that the fire was the fault of either the Landlord or the Tenants.
10. As fire cause the tenancy agreement to become frustrated, there was no landlord and tenant relationship beyond June 2, 2023. Given this, rent arrears are calculated up to this date.
11. The lawful rent is \$1,568.60. It was due on the 1st day of each month.
12. Since the application was filed, the Landlord received \$2,788.00 from the City and \$2,577.00 from Housing as payments towards the Tenants' arrears. The Landlord stated that the payment received from Housing was short by \$37.80 but that she was waiving that amount.
13. The Landlord seeks \$2,614.80 in rent arrears owing to June 2, 2023.
14. It was unclear whether any rent was paid on or after June 2, 2023. The Landlord is reminded that any rent that was paid for the post-frustration period must be refunded to the Tenants.
15. The Landlord incurred costs of \$186.00 for the application filing fee.
16. The Landlord collected a rent deposit of \$1,550.00 from the Tenants and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
17. Interest on the rent deposit, in the amount of \$38.13 is owing to the Tenants for the period from December 1, 2020 to June 2, 2023.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated as of June 2, 2023, the date the tenancy agreement became frustrated as a result of the fire.
2. The Tenants shall pay to the Landlord \$1,212.67. This amount includes rent arrears owing up to June 2, 2023 and the application filing fee less the rent deposit and interest the Landlord owes on the rent deposit. See Schedule 1 for the calculation of the amount owing.
3. Any rent paid for the post-frustration period for or on behalf of the Tenants shall be applied against any amounts owing by the Tenants.
4. If the Tenants do not pay the Landlord the full amount owing on or before August 29, 2023, the Tenants will start to owe interest. This will be simple interest calculated from August 30, 2023 at 6.00% annually on the balance outstanding.

August 18, 2023

Date Issued

Dawn Sullivan

Vice Chair, Landlord and Tenant Board

15 Grosvenor St, 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.

Schedule 1
SUMMARY OF CALCULATIONS

A. Amount the Tenants must pay as the tenancy is terminated

Rent Owing to June 2, 2023	\$8,017.60
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$5,402.80
Less the amount of the last month's rent deposit	- \$1,550.00
Less the amount of the interest on the last month's rent deposit	- \$38.13
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$1,212.67

2023 ONL TB 57502 (CanLII)