



Order under Section 69 Residential Tenancies Act, 2006

Citation: Queen Square 2653526 Ontario Limited v Kehinde, 2023 ONLTB 50313

Date: 2023-07-18

File Number: LTB-L-019234-23

In the matter of: 11, 245 LOGAN AVE
TORONTO ON M4M2N2

Between: Queen Square 2653526 Ontario Limited Landlord

And

Solomon Kehinde Tenant

Queen Square 2653526 Ontario Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Solomon Kehinde (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on July 4, 2023. The Landlord's legal representative Bryan Rubin and the Tenant attended the hearing.

Determinations:

Possession of rental unit:

1. The Tenant testified that he has not resided in the rental unit since December 31, 2022. The Tenant argued that he should not be ordered to pay arrears of rent beyond this date.
2. The Tenant agreed that he did not provide the Landlord with notice to vacate the rental unit, nor did he return keys or vacant possession of the unit to the Landlord. Since January 2023, the Tenant has been residing at his friend's home, but has still had access to the rental unit.
3. In *1162994 Ontario Inc. v. Bakker, 2004 CanLII 59995 (ON CA)*, the Ontario Court of Appeal determined that "possession of a rental unit refers to some form of control over that unit as demonstrated by factors such as access to, use of, or occupation of the unit." Further, in the Divisional Court decision of *2295477 Ontario Inc. v. Cromwell, 2017 ONSC 3048*, the Court determined that the Board erred in concluding that a tenant could not have more than one residence.

4. In my view, I find that the Tenant is still in possession of the rental unit. The evidence is clear that the Tenant did not put the Landlord on notice of terminating his tenancy, did not return vacant possession of the rental unit and as of the hearing date, had full access to the unit. As such, the Tenant will be required to pay the arrears of rent after December 31, 2022.

Non-payment:

5. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment 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.
6. As of the hearing date, the Tenant was still in possession of the rental unit.
7. The lawful rent is \$1,810.08. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$59.51. This amount is calculated as follows: \$1,810.08 x 12, divided by 365 days.
9. The Tenant has not made any payments since the application was filed.
10. The rent arrears owing to July 31, 2023 are \$16,026.82.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$1,965.94 from the Tenant and 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.
13. Interest on the rent deposit, in the amount of \$24.91 is owing to the Tenant for the period from January 1, 2023 to July 4, 2023.

Relief from eviction:

14. 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.
15. The Tenant did not propose a repayment plan for the arrears owing and expressed that he has no interest in continuing the tenancy. As such, no relief from eviction is warranted.

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:**
 - \$16,212.82 if the payment is made on or before July 29, 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 July 29, 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 July 29, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$12,649.93. 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 \$59.51 per day for the use of the unit starting July 5, 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 July 29, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 30, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before July 29, 2023, then starting July 30, 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 July 30, 2023.

July 18, 2023

Date Issued

Fabio Quattrociochi

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 January 30, 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 July 29, 2023

Rent Owing To July 31, 2023	\$16,026.82
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 into the LTB since the application was filed	- \$0.00
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 the Tenant must pay to continue the tenancy	\$16,212.82

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

Rent Owing To Hearing Date	\$14,454.78
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 into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,965.94
Less the amount of the interest on the last month's rent deposit	- \$24.91
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	\$12,649.93
Plus daily compensation owing for each day of occupation starting July 5, 2023	\$59.51 (per day)