



Order under Section 69 Residential Tenancies Act, 2006

Citation: Dac huu Banh v Usman Malik, 2023 ONLTB 39737

Date: 2023-05-26

File Number: LTB-L-059870-22

In the matter of: 4 MACTIER RD
BRAMPTON ON L6P1N8

Between: Dac Huu Banh and Nu Dang Banh Landlords

And

Abubakar Malik, Fahmeeda Malik, Haroon Tenants
Mohammad Malik, Ishaq Malik, Usman Malik
and Zunairah Malik

Dac Huu Banh and Nu dang Banh (the 'Landlords') applied for an order to terminate the tenancy and evict Abubakar Malik, Fahmeeda Malik, Haroon Mohammad Malik, Ishaq Malik, Usman Malik and Zunairah Malik (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

The Landlords also claimed charges related to NSF cheques.

This application was heard by videoconference on May 10, 2023.

The Landlords, the Landlords' adult children Hai-Yee Banh ('HB') and Steven Banh, and the Tenant, Haroon Mohammad Malik ('HM'), attended the hearing. HB assisted with translating for the Landlords, and provided evidence herself.

Determinations:

1. The Landlords served the Tenants with a Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). When I asked the Landlords about a discrepancy in the N4 notice, HB advised that there was a rent increase effective September 5, 2022, and the rent increased from \$3,200.00 to \$3,265.00. This increase was for more than the 1.2% provincial guideline that was in place for 2022. HB confirmed that the rental unit was occupied for residential purposes prior to November 15, 2018. The partial exemption from the Act set out at section 6.1 of the Act therefore does not apply.

2. The rent increase that took effect on September 5, 2022 was not lawful because it did not comply with sections 110 and 120 of the Act, and the lawful rent remains \$3,200.00 per month. Because the rent charged in the N4 notice was based partly on this unlawful rent increase, it did not correctly set out the amount of rent due when it was served, as required by section 59 of the Act. The N4 notice is therefore invalid and cannot form the basis of an application to terminate the tenancy and evict the Tenants.

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3. The Landlords decided to proceed with the application to seek an order for arrears of rent only.
4. As of the hearing date, the Tenants were still in possession of the rental unit.
5. The lawful rent is \$3,200.00. It is due on the 5th day of each month.
6. The Tenants have paid \$6,530.00 to the Landlords since the application was filed.
7. The rent arrears owing to June 4, 2023 are \$20,670.00. HM agreed that this is the correct amount of rent arrears currently owing.
8. The Landlords are entitled to \$180.00 to reimburse the Landlords for administration charges and \$7.00 for bank fees the Landlords incurred as a result of 9 cheques given by or on behalf of the Tenants which were returned NSF.
9. The Landlords incurred costs of \$186.00 for filing the application and are entitled to reimbursement of those costs.

It is ordered that:

1. The Tenants shall pay the Landlords \$21,043.00. This includes the arrears of rent to June 4, 2023, reimbursement for the NSF cheques, and the Landlords' costs of filing this application.
2. If the Tenants do not pay the Landlords the full amount owing on or before June 6, 2023, the Tenants will start to owe interest. This will be simple interest calculated from June 7, 2023 at 6.00% annually on the balance outstanding.

May 26, 2023
Date Issued

Mark Melchers
Member, Landlords and Tenants 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.