



Order under Section 69 Residential Tenancies Act, 2006

Citation: 592182 ONTARIO LIMITED v Gilbert Bello Santana, 2023 ONLTB 35439

Date: 2023-05-11

File Number: LTB-L-059047-22

In the matter of: 1, 935 WILSON AVE NORTH
YORK ON M3K1E8

Between: 592182 ONTARIO LIMITED Landlord

And

Gilbert Bello Santana Tenant

592182 ONTARIO LIMITED (the 'Landlord') applied for an order to terminate the tenancy and evict Gilbert Bello Santana and Mesissa Armstrong (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on April 26, 2023. The Landlord's legal representative Carrie Aylwin and the responding party Melissa Armstrong attended the hearing.

As of 11:00am, the Tenant Gilbert Bello Santana was not present or represented at the hearing although properly served with notice of this hearing by the LTB.

Determinations:

Named parties:

1. The responding party Melissa Armstrong raised preliminary issue at the commencement of the hearing respecting the named parties and/or Tenants on the Landlord's application.
2. The tenancy commenced on April 15, 2022. The parties agree that both Melissa Armstrong and Gilbert Bello Santana signed a lease agreement with the Landlord on April 20, 2022. Both Mr. Santana and Ms. Armstrong signed as Tenants. The Landlord submitted into evidence a copy of the lease agreement (LL exhibit #1).
3. Ms. Armstrong testified that she has never resided in the rental unit, was never provided with a key or access to the unit. Ms. Armstrong stated that she signed the lease

agreement to help her friend secure the rental unit and at no point did she intend to reside in the unit. Ms. Armstrong has not visited the rental unit since the signing of the lease agreement and has had no communication with the Landlord or their staff prior to the hearing date.

4. The Landlord's representative argues that Ms. Armstrong was fully aware of the agreement being signed and as such, should be deemed a Tenant and held responsible for the arrears of rent owing.
5. Section 202 of the Residential Tenancies Act, 2006 (the Act) states:
 - 202** (1) In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so,
 - (a) may disregard the outward form of a transaction or the separate corporate existence of participants; and
 - (b) may have regard to the pattern of activities relating to the residential complex or the rental unit.
6. In accordance with section 202 of the Act, I must go beyond mere consideration of the terms of the lease and examine the actual activities and conduct of the parties.
7. In my view, I find that Ms. Armstrong is not a Tenant of the rental unit, but rather was acting a Guarantor. I also find that Ms. Armstrong was never in possession of the rental unit. The Board does not have jurisdiction to order arrears of rent against a Guarantor, or a Tenant on an L1 application who ceased to be in possession of the rental unit before the application was filed.
8. The uncontested evidence of Ms. Armstrong indicates that she never resided or intended to reside in the rental unit, that she does not have control or access to the unit and has never communicated or dealt directly with the Landlord since the commencement of the tenancy.
9. The leading case concerning when a tenant is in possession of a rental unit for the purpose of the Board's jurisdiction is the Court of Appeal decision in *1162994 Ontario Inc. v. Bakker, 2004 CanLII 59995 (ON CA)*. In Bakker the Court of Appeal held 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."
10. As such, the application is amended to remove Ms. Armstrong as a Tenant and/or respondent to the application. The order will be issued solely against the Tenant Gilbert Bello Santana.

Arrears of rent:

11. 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.
12. As of the hearing date, the Tenant was still in possession of the rental unit.
13. The lawful rent is \$1,550.00. It is due on the 1st day of each month.
14. Based on the Monthly rent, the daily rent/compensation is \$50.96. This amount is calculated as follows: \$1,550.00 x 12, divided by 365 days.
15. The Tenant has not made any payments since the application was filed.
16. The rent arrears owing to May 14, 2023 are \$14,778.79.
17. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
18. The Landlord collected a rent deposit of \$1,550.00 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.
19. Interest on the rent deposit, in the amount of \$40.02 is owing to the Tenant for the period from April 15, 2022 to April 26, 2023.
20. 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.

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:**
 - \$14,964.79 if the payment is made on or before May 14, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$16,514.79 if the payment is made on or before May 22, 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 May 22, 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 May 22, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$12,457.49. 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 \$50.96 per day for the use of the unit starting April 27, 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 May 22, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 23, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before May 22, 2023, then starting May 23, 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 May 23, 2023.

May 11, 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 November 23, 2023 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.

*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

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 May 14, 2023**

Rent Owing To May 14, 2023	\$14,778.79
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	\$14,964.79

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 22, 2023

Rent Owing To June 14, 2023	\$16,328.79
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	\$16,514.79

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

Rent Owing To Hearing Date	\$13,861.51
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	- \$1,550.00
Less the amount of the interest on the last month's rent deposit	- \$40.02

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	\$12,457.49
Plus daily compensation owing for each day of occupation starting April 27, 2023	\$50.96 (per day)