



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

**Citation:** Semcor Properties Inc. v Malcolm Harris, 2023 ONLTB 36443

**Date:** 2023-05-09

**File Number:** LTB-L-068083-22

**In the matter of:** 3, 286 Vine St  
St Catharines Ontario L2M4T3

**Between:** Semcor Properties Inc. Landlord

**And**

Malcolm Harris and Spencer Aitken Tenants

Semcor Properties Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Malcolm Harris and Spencer Aitken (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on April 11, 2023. The Landlord and the Tenant, M. Harris (MH), attended the hearing. As of 12:10 p.m., the Tenant, S. Aitken (SA) 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 and MH's evidence.

**Preliminary Issues:**

**Severance of Joint Tenancy**

1. It was undisputed that MH and SA entered a joint tenancy with the Landlord. MH submits that he vacated the rental unit on November 1, 2022. As such, he states that he should be responsible for rent arrears from November 2021 to November 1, 2022 only. In other words, MH is arguing that the tenancy was severed and therefore, he is no longer liable for the repayment of the entire sum of rent.
2. In a joint tenancy, there is a single tenancy agreement, and the tenants are jointly and severally (individually) liable for the payment of the entire rent for the rental unit. A joint tenancy cannot be unilaterally severed by a tenant vacating the unit. Section 47.2 of the *Residential Tenancies Act, 2006* (the 'Act') specifies when a joint tenancy can be severed: (a) the tenant is deemed under subsection 47.3 (1) to have experienced violence or another form of abuse; or (b) a child residing with the tenant is deemed under subsection 47.3 (1) to have experienced violence or another form of abuse. There was no evidence

that MH severed the joint tenancy in accordance with the Act. As such, I find that the joint tenancy was not severed.

### Section 82 Issues

3. MH sought to raise issues in the tenancy pursuant to section 82 of the. The Landlord objected to the Tenant's ability to raise these issues pursuant to SOL-26405-21-IN issued on March 29, 2022.
4. The matter was first before the Board on March 22, 2022. However, the matter was adjourned as there was insufficient time to begin hearing the application. The interim order states that the parties agreed that the Tenants would pay the ongoing rent until the matter returns to the Board. The Board also ordered in the interim:
  3. On or before April 7, 2022, the Tenant's shall pay the lawful monthly rent to the Landlord or the Board in trust, and every month thereafter on the first day of each month commencing May 1, 2022 until this application is resolved.
5. If the Tenant fails to comply with paragraph 3 or 5, the Board may refuse to accept the evidence or consider the issues of the Tenant.
5. The Landlord submits that rent was not paid in full to the Landlord after the application was filed. Further, the Board's records show that rent was not paid into the Board in trust. MH stated that he was confused by the interim order and assumed they would be contacted regarding payment of rent arrears by the Board. MH states that he paid his portion of rent.
6. I denied MH's request to raise issues in the tenancy pursuant to section 82 of the Act. The interim order is clear that if the Tenant does not pay the full lawful monthly rent on or before May 1, 2022 and before the matter returns, the Board may refuse to consider the Tenant's evidence or submissions. The parties agreed that the full monthly rent would be paid moving forward. While MH states he paid his portion of rent, the interim order specifies that the lawful monthly rent be paid. As found above, the Tenants entered a joint tenancy and are therefore jointly liable for the payment of rent. Therefore, only paying a portion of the lawful rent does not meet the terms of the interim order. In addition, I find it unlikely that MH thought the interim order meant the Board would contact the Tenants regarding payment as the order is clear that the Tenants shall pay the rent to the Landlord or to the Board.
7. While the interim order states the Board *may* refuse to accept the evidence or consider the issues of the Tenants, I found it would be unfair to allow MH to make submissions on section 82 issues considering that the parties agreed to this term. As such, MH's request is denied. This does not preclude MH from filing their own application. MH may wish to seek legal advice in this regard.

### Determinations:

8. 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.

9. The Tenants were in possession of the rental unit on the date the application was filed.
10. The lawful rent is \$1,486.25. It was due on the 1st day of each month.
11. SA vacated the rental unit on April 4, 2023. Rent arrears are calculated up to the date the Tenants returned vacant possession to the Landlord.
12. The Tenants paid \$7,425.00 to the Landlord since the application was filed. MH did not dispute this amount insofar as the Landlord's calculations included the amount paid by him (\$3,625.00) from November 2021 to November 2022.
13. The rent arrears owing to April 4, 2023 are \$16,942.94.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The Landlord collected a rent deposit of \$1,450.00 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.
16. Interest on the rent deposit, in the amount of \$36.97 is owing to the Tenants for the period from September 20, 2021 to April 4, 2023.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated as of April 4, 2023, the date the Tenants moved out of the rental unit
2. The Tenants shall pay to the Landlord \$15,641.97. This amount includes rent arrears owing up to the date the Tenants moved out of the rental unit and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
3. If the Tenants does not pay the Landlord the full amount owing on or before May 20, 2023, the Tenants will start to owe interest. This will be simple interest calculated from May 21, 2023 at 6.00% annually on the balance outstanding.

**May 9, 2023**

**Date Issued**

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Camille Tancioco

Member, Landlord and Tenants 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.

\*Note: When the LTB 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 Tenants must pay as the tenancy is terminated**

Rent Owing To Move Out Date	\$24,367.94
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$7,425.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,450.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$36.97
<b>Less</b> the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenants is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$15,641.97</b>