



Order under Section 69
Residential Tenancies Act, 2006

Citation: Metcap Living Management Inc v Md Javed Khan Majlish, 2023 ONLTB 32050

Date: 2023-04-19

File Number: LTB-L-055115-22

In the matter of: 416, 10 MACEY AVE SCARBOROUGH
ON M1L4R4

Between: Metcap Living Management Inc Landlord

And

Md Javed Khan Majlish Tenant

Metcap Living Management Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Md Javed Khan Majlish (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on April 11, 2023.

The Landlord's Representative, S. Enriquez and the Tenant attended the hearing.

Determinations:

1. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,350.52. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$44.40. This amount is calculated as follows: $\$1,350.52 \times 12$, divided by 365 days.
5. The Tenant has paid \$2,660.43 to the Landlord since the application was filed.
6. The rent arrears owing to April 30, 2023 are \$8,163.79.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,325.74 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.

9. Interest on the rent deposit, in the amount of \$28.60 is owing to the Tenant for the period from June 1, 2022 to April 11, 2023.

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Relief from eviction

10. The Tenant testified that he originally withheld rent because of issues he was having with the Landlord. He testified that he felt the Landlord was not responding appropriately, or at all to issues that were brought to their attention. The Tenant lives in the unit with his wife and 2 children. He has lived in the unit since 2011. He testified that he understands now that he can not withhold rent because of issue he may be having with the Landlord.
11. The Tenant suggested a payment plan that would see the arrears paid off in approximately 6 months, by paying \$1391.63 on the 9th day of every month starting on May 9, 2023.
12. The Landlord requested a standard order. The Landlord's representative submits that by allowing the payment plan suggested by the Tenant, the Landlord is prejudiced as the Landlord relies on the rent money to pay their employees salaries.
13. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Residential Tenancies Act, 2006 (the 'Act'), and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
14. I find that the payment plan suggested by the Tenant is reasonable in the circumstances. This is a long-standing 12 year tenancy. The Tenant was under the mistaken impression that he could withhold rent from the Landlord, but I am confident that the Tenant now understands that they cannot. I find that the prejudice that the Tenant and his family would suffer by terminating the tenancy outweighs any potential prejudice that the Landlord may suffer.

It is ordered that:

1. The Tenant shall pay to the Landlord \$8,163.79 for arrears of rent up to April 30, 2023 and \$186.00 in costs. The total amount the Tenant owes to the Landlord is \$8,349.79
2. The Tenant shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:
 - Starting on May 9, 2023, the Tenant shall pay to the Landlord \$1391.63 on or before the 9th day of every month until October 9, 2023.
3. The Tenant shall also pay to the Landlord new rent on time and in full as it comes due and owing for the period starting May 1, 2023 until October 1, 2023 or until the arrears are paid in full, whichever date is earliest.

4. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and

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evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after April 30, 2023

April 19, 2023

Date Issued

Emily Robb

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.