



**Order under Section 94 / 88.2
Residential Tenancies Act, 2006**

Citation: Hollyburn Properties Ltb v Bangura, 2023 ONLTB 31799

Date: 2023-04-19

File Number: LTB-L-066835-22

In the matter of: 211, 103 AVENUE RD TORONTO
ON M5R2G9

Between: Hollyburn Properties Ltd. Landlord

And

Abdul Rahim Bangura Tenant

Hollyburn Properties Ltb (the 'Landlord') applied for an order to terminate the tenancy and evict Abdul Rahim Bangura (the 'Tenant') because the rental unit is the superintendent's premises and the Tenant's employment as superintendent has ended. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

It is determined that:

1. This application was heard by videoconference on April 5, 2023.
2. The Landlord's legal representative, Rachel Mazur, and the Tenant attended the hearing, at which time the Tenant testified that they spoke with Duty Counsel.
3. At the start of the hearing the Landlord requested my permission to withdraw its application for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement. The Tenant did not object to this request and made no submissions otherwise with respect to it. I orally ruled in favor of this request.
4. Also, at the start of the hearing the Tenant requested an adjournment to retain a particular counsel who is on vacation until July and so will not be available until least until then. As a

clarification question, I asked what steps, if any, the Tenant has taken to obtain alternative representation given the extended unavailability of the Tenant's preferred counsel. In response the Tenant testified that while he had reached out to other licensees, he did not recall their names or when he contacted them. The Landlord baldly opposed this request.

5. Given the Tenant's unexplained inability to recall the names of these other prospective counsel or when he contacted them, I attached little weight to the Tenant's credibility on this issue and so was unable to determine that he took reasonable steps to retain alternative counsel. As well, while all things being equal, the Tenant has a right to be represented by counsel of their choosing, that right is neither absolute, nor can it be considered in a vacuum. Given the Landlord's objection to the request, the fact that the Tenant had the benefit of Duty Counsel at the hearing and the significant length of the delay termination sought by the Tenant, I determined that it would be unduly prejudicial to the Landlord to grant this request. My concern about the length of delay sought was reinforced later in the hearing when the Tenant testified that not only has he not paid rent at least since October 26, 2022 but that he would not be able to pay rent going forward.
6. The Landlord produced a copy of the Tenant's March 31, 2022 employment letter with the Landlord, paragraph "a" of which states in part: "You will be provided with a one-bedroom Residence in the Building with a current "Monthly Rental" amount of \$1,750.00 which is not payable by you so long as you remain an active employee of Hollyburn." Rachel Mazur testified that this is the lawful rent and that this amount should form the basis of the calculation of the Landlord's claim for compensation under the application. While the Tenant did not dispute that this is the lawful rent pursuant to the tenancy agreement, he testified that the rent should be free, in part because of the unpaid overtime work he performed as a superintendent. However, given the clear information in the employment letter on this issue, I determined the lawful rent to be \$1,750.00.
7. The Tenant did not dispute Rachel Mazur's submission that the Tenant is in possession of the rental unit. As such, I determined this to be the case.
8. The Landlord produced a copy of a letter dated October 26, 2022 from the Landlord to the Tenant titled "Re: Termination of Your Employment" which terminated the Tenant's employment as a superintendent effect October 26, 2022. As the Tenant did not dispute that his employment was terminated on this date, I determined this to be the case.
9. The Tenant testified that he opposes the application because the Landlord discriminated against him by terminating his employment and by attempting to terminate his tenancy because his employment was terminated.
10. Section 93 of the Residential Tenancies Act, 2006 (the Act) provides:
 - (1) If a landlord has entered into a tenancy agreement with respect to a superintendent's premises, unless otherwise agreed, the tenancy terminates on the day on which the employment of the tenant is terminated.

- (2) A tenant shall vacate a superintendent's premises within one week after his or her tenancy is terminated.
- (3) A landlord shall not charge a tenant rent or compensation or receive rent or compensation from a tenant with respect to the one-week period mentioned in subsection

11. Section 94 of the Act the provides:

The landlord may apply to the Board for an order terminating the tenancy of a tenant of superintendent's premises and evicting the tenant if the tenant does not vacate the rental unit within one week of the termination of his or her employment.

- 12. The Board does not have jurisdiction over adjudicating the propriety of a landlord's decision to terminate a superintendent's employment. As such the Tenant's concerns in this regard were not considered in my assessment of the merits of the application.
- 13. Based on the above determinations of fact, I found that the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application.
- 14. Based on the monthly rent, the daily compensation is \$57.53. This amount is calculated as follows: \$1,750.00 x 12, divided by 365 days. The Landlord is entitled to compensation for 153 days (which comprises the period from seven days after the termination of the Tenant's employment, November 3, 2022, to the date of the hearing April 5, 2023). The total amount of compensation owing for this period is \$8,802.09
- 15. It was not contested that: the Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs and that; there is no last month's rent deposit.
- 16. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. Specifically, the Tenant testified that he has been unemployed since losing his role as superintendent and that, as such, he requires between two to three months to gather the funds needed to pay for another rental unit. As well, he experiences post-traumatic stress disorder (PTSD) as a result of a "racist" comment that an employee of the Landlord made in his regard to a friend of his. In response to clarifying questions from me the Tenant testified that the tenancy started on April 11, 2022 and that he has no medical records in relation to his PTSD because he has not been diagnosed with this condition, but simply feels that he has it. In response to another clarifying question from me, the Tenant testified that because his only source of income is employment insurance benefits, he is unable to pay the Landlord any compensation owing after their employment terminated and would be unable to make any future compensatory payments in consideration of the delayed termination he seeks.

17. Rachel Mazur testified that the Landlord is opposed to delayed termination, as the Landlord needs to offer the Tenant's unit to the replacement superintendent.
18. While I appreciate the Tenant's difficult financial circumstances, in light of the Tenant's complete inability to make the Landlord whole for the Tenant's occupancy, I determined that it would be unduly prejudicial to the Landlord to delay termination of the tenancy. As such, I denied the Tenant's request for relief.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before May 14, 2023.
2. If the unit is not vacated on or before May 14, 2023, then starting May 15, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. 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 15, 2023.
4. The Tenant shall pay to the Landlord \$8,988.09. This amount includes compensation owing up to April 5, 2023 and the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing on or before May 14, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 15, 2023 at 6.00% annually on the balance outstanding.
6. The Tenant shall also pay the Landlord compensation of \$57.53 per day for the use of the unit starting April 6, 2023 until the date the Tenant moves out of the unit.

May 3, 2023

Date Issued

Sean Henry

Vice Chair, 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 of the Tenant expires on November 1, 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.