



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

Citation: Mwiwa v Linsford, 2023 ONLTB 31315

Date: 2023-04-19

File Number: LTB-L-032575-22

In the matter of: Basement, 50 SLED DOG RD
BRAMPTON ON L6R0J7

Between: Benedette Paul Landlord

Eric Mwiwa

And

Benedette Paul and Reid Loylin Roy Tenant
Ryan Reid Linsford

Eric Mwiwa (the 'Landlord') applied for an order to terminate the tenancy and evict Reid Loylin Roy and Ryan Reid Linsford (the 'Tenant') because:

- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on February 9, 2023.

The Landlord and the Landlord's representative Shikha Kapoor. The Landlord's daughter Rachel Mwiwa attended as a witness for the Landlord

As of 10 a.m., the Tenant 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's evidence.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy between the Landlord and the Tenants is terminated as of August 31, 2022.
2. The Tenant was in possession of the rental unit on the date the application was filed.

File Number: LTB-L-032575-22

N12 Notice of Termination

3. On June 7, 2022, the Landlord gave the Tenant an N12 notice of termination deemed served on June 8, 2023 with the termination date of August 31, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord and his daughter.
4. The Landlord in good faith requires possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.
5. The Landlord has provided evidence that he has compensated the Tenant an amount equal to one month's rent by August 31, 2022 and has therefore fulfilled the affidavit requirement..
6. The Tenant was required to pay the Landlord \$5,858.63 in daily compensation for use and occupation of the rental unit for the period from September 1, 2022 to February 9, 2023.
7. Based on the Monthly rent, the daily compensation is \$36.16. This amount is calculated as follows: \$1,100.00 x 12, divided by 365 days.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. There is no last month's rent deposit.

Relief from eviction

10. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'). The Tenant was not in attendance. Based on the uncontested testimony, I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
11. The Landlord testified that he currently lives in the upper level of the home and the Tenants reside in the basement. He requires the basement for his daughter to reside in due to his medical condition and care needs.
12. The Landlord's daughter testified that she is a nurse and is able to care for her Father, who has been diagnosed with Parkinson's disease. Medical evidence was submitted to the Board by the Landlord regarding his 2018 diagnosis. The Landlord now has limited movement and requires assistance with daily living as he is not stable on his own. The Landlord's daughter testified that she wished to care for her Father and being a nurse, she would be able to help assist him with his medical needs.

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 April 30, 2023.

File Number: LTB-L-032575-22

2. If the unit is not vacated on or before April 30, 2023, then starting May 1, 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 1, 2023.
4. The Tenant shall pay to the Landlord \$5,858.63, which represents compensation for the use of the unit from September 1, 2022 to February 9, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenant shall also pay the Landlord compensation of \$36.16 per day for the use of the unit starting February 10, 2023 until the date the Tenant moves out of the unit.
6. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
7. The total amount the Tenant owes the Landlord is \$6,230.63.
8. If the Tenant does not pay the Landlord the full amount owing on or before April 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 1, 2023 at 6.00% annually on the balance outstanding.

April 19, 2023

Date Issued

Maria Shaw

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 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.

2023 ONL/TB 31315 (CanLII)