



Order under Section 69 Residential Tenancies Act, 2006

Citation: Mora v Munroe, 2023 ONLTB 28348

Date: 2023-04-17

File Number: LTB-L-038461-22

In the matter of: Basement, 31 Hamstead av. Toronto
ON M4C2S3

Between: Henry Mora Landlord

And

Austin Wayne McMullen Tenant

Henry Mora (the 'Landlord') applied for an order to terminate the tenancy and evict Austin Wayne McMullen (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 2, 2023.

The Landlord and the Tenant attended the hearing.

Determinations:

Robert Wayne Munroe is Not a Tenant

1. The Landlord listed two tenants on their application. Austin Wayne McMullen and Robert Wayne Munroe.
2. The Tenants argue that only Austin Wayne McMullen ('A.W.M') should be named as a tenant on this application as he is the only person who lives in the rental unit. The Landlord disagrees because both individuals are listed as tenants on the lease.
3. The two listed tenants are father and son. It is undisputed that the son A.W.M lives in the basement unit that is the subject of this application. It is also undisputed that the father Robert Wayne Munroe ('R.W.M') lives at the same rental address but upstairs in a different unit. The upstairs unit is a separate unit and is not the subject of this application.

4. Both A.W.M and R.W.M are listed as tenants on the lease; however, the lease says that only A.W.M will be occupying the rental unit. It also says that no other persons shall occupy the premises without written consent of the Landlord.
5. R.W.M testified that the reason he wanted to be on the lease for the basement unit is because he is a foster parent. R.W.M testified that he wanted the ability to remove someone who was living in the basement who was not supposed to be there.
6. Section 202(1) of The *Residential Tenancies Act, 2006* ('the Act') states that the Board shall ascertain the real substance of all transactions and activities relating to the residential complex or a rental unit.
7. The Act says that a "tenant" includes a person who pays rent in return for the right to occupy a rental unit.
8. In *Condinho v. Seetarram*, [2003] O.R.H.T.D. No 51 (O.R.H.T.D) the tenant argued that she was not a tenant. All the negotiations for the lease were done by the father to assist a family friend whose rental application would not have been approved by the landlord. Although her name was on the lease, she never occupied the rental unit. The ORHT held that she was fully aware of the negotiations carried out in her name by her father as her agent and that she was the person with the right to occupy the rental unit and was therefore the tenant.
9. I find on a balance of probabilities that R.W.M is not a tenant. This is because he does not have a right to occupy the rental unit. Despite being listed as a tenant on the lease, the lease explicitly says that only A.W.M will occupy the rental unit and that no other persons shall occupy the unit without the written consent of the landlord. The right to occupy the unit is an essential element in a tenancy.

The Application

10. 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.
11. As of the hearing date, the Tenant was still in possession of the rental unit.
12. The lawful rent is \$1,600.00. It is due on the 1st day of each month.
13. Based on the Monthly rent, the daily rent/compensation is \$52.60. This amount is calculated as follows: \$1,600.00 x 12, divided by 365 days.
14. The Tenant has paid \$8,430.00 to the Landlord since the application was filed.
15. The Landlord submits that the rent arrears owing to March 31, 2023 are \$13,170.00.
16. The Tenant testified that he disagrees with the amount of outstanding arrears as stated by the Landlord because his father has made some payments. However, the Tenant's father

was unable to state what exactly he paid, or what the amount of outstanding arrears should be. As such, I do not find the testimony of the Tenant or his father to be reliable regarding the outstanding arrears. In contrast I found the testimony of the Landlord regarding the total payments he received from both the Tenant and his father to be reliable. As such, I find that the rent arrears owing to March 31, 2023 are \$13,170.00.

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 \$1,600.00 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 \$25.89 is owing to the Tenant for the period from August 1, 2021 to March 2, 2023.
20. The Tenant requested relief from eviction in the form of a repayment plan. The Tenant is a seasonal construction worker. At the time of the hearing the Tenant was not currently working but estimated that he will be back to work in 3-4 weeks. The Landlord testified that he is opposed to a repayment plan as the parties agreed to one previously in August 2022 but the Tenant did not abide by it.
21. I do not think it would be fair in the circumstances to impose a repayment plan as I am not satisfied that the Tenant would abide by it. This is because the Tenant previously did not abide by a payment plan, was out of work at the time of the hearing, and the outstanding arrears are extremely high and have only continued to grow since the application was filed.
22. 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 postpone the eviction until April 30, 2023 pursuant to subsection 83(1)(b) of the Act. In making that determination I have considered that the Tenant needs time to find somewhere new to live, but I have declined to postpone the eviction any longer because of the large amount of outstanding arrears.

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:**
 - \$14,956.00 if the payment is made on or before April 30, 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 April 30, 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 April 30, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$10,235.31. 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 \$52.60 per day for the use of the unit starting March 3, 2023 until the date the Tenants moves out of the unit.
7. If the Tenant do not pay the Landlord the full amount owing on or before April 28, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 29, 2023 at 6.00% annually on the balance outstanding.
8. 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.
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 1, 2023.

April 17, 2023

Date Issued

Amanda Kovats

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 October 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.

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 April 30, 2023

Rent Owing To April 30, 2023	\$23,200.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$8,430.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Total the Tenant must pay to continue the tenancy	\$14,956.00

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

Rent Owing To Hearing Date	\$20,105.20
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$8,430.00
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	- \$1,600.00
Less the amount of the interest on the last month's rent deposit	- \$25.89
Total amount owing to the Landlord	\$10,235.31
Plus daily compensation owing for each day of occupation starting March 3, 2023	\$52.60 (per day)