



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

**Citation:** Amlani v Muhammed, 2023 ONLTB 27329

**Date:** 2023-03-27

**File Number:** LTB-L-044472-22

**In the matter of:** 1102, 7 MABELLE AVE  
TORONTO ON M9A4X7

**Between:** Monika Amlani Landlord

**And**

Mehad Muhammed Tenant

Monika Amlani (the 'Landlord') applied for an order to terminate the tenancy and evict Mehad Muhammed (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's legal representative, T. Landriault, and the Tenant attended the hearing.

**Preliminary Issue:**

1. The Tenant submitted that he is not responsible for the entirety of the arrears. The previous tenant, Rushawn Ettienne (RE), vacated the rental unit on April 7, 2022. The Landlord prevented the Tenant from obtaining another roommate and had he received permission, he would have got one, thus minimizing the amount of arrears. As such, RE should remain as a party to the application. Submitted into evidence was an email dated April 19, 2022 where the Landlord stated the Tenant required her consent to obtain another roommate.
2. The Landlord submitted that RE vacated the unit March 30, 2022. Further, they did not prevent the Tenant from obtaining another roommate. The Landlord was explicit that the Tenant could get a roommate, but the Landlord required the Tenant to obtain her consent before the roommate moved in.
3. RE is removed as party to the application. While the Landlord and Tenant dispute the date RE vacated the unit, it was uncontested RE vacated on or about March or April 2022. The Landlord filed this application on August 8, 2022.
4. Subsection 87(1)(1.1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') permits a landlord to apply for an order for the payment of arrears of rent if the tenant is in possession of the rental unit. The effect of this section is that if the tenant is not in possession of the rental unit

on the date the application is filed, the Board does not have jurisdiction (authority) to make an order requiring the tenant to pay the arrears of rent with an application of this type. This is consistent with the decision of the Ontario Court of Appeal in *1162994 Ontario Inc. v. Bakker et al.*, [2004] O.J. No. 2565, based on the previous but identical legislation.

5. RE was not in possession of the rental unit at the time the Landlord applied for an order to terminate the tenancy and evict the Tenants. As a result, RE is removed as a party to the application.
6. I am also not satisfied that the Tenant was barred from getting another roommate after RE vacated. While the Landlord requested the Tenant to receive her consent, nothing in the email stated that the Tenant cannot obtain a roommate. Moreover, the evidence was that the Tenant did not attempt to get another roommate for the remainder of the tenancy, several months later. Therefore, the Tenant did not minimize his losses and I find no authority to find that the Tenant is not responsible for the entirety of the arrears.

**Determinations:**

7. 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.
8. The Tenant was in possession of the rental unit on the date the application was filed.
9. The Tenant vacated the rental unit on February 18, 2023. Rent arrears are calculated up to the date the Tenant vacated the unit.
10. The lawful rent is \$2,200.00. It was due on the 1st day of each month.
11. The Tenant has paid \$1,000.00 to the Landlord since the application was filed.
12. The rent arrears owing to February 18, 2023 are \$14,689.32.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. The Landlord collected a rent deposit of \$2,200.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
15. Interest on the rent deposit, in the amount of \$55.60 is owing to the Tenant for the period from February 15, 2022 to February 18, 2023.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated as of February 18, 2023, the date the Tenant moved out of the rental unit
2. The Tenant shall pay to the Landlord \$12,619.72. This amount includes rent arrears owing up to the date the Tenant 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 Tenant. See Schedule 1 for the calculation of the amount owing.

3. If the Tenant does not pay the Landlord the full amount owing on or before April 7, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 8, 2023 at 5.00% annually on the balance outstanding.

**March 27, 2023**

**Date Issued**

\_\_\_\_\_  
Camille Tancioco

Member, Landlord and Tenant 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 Tenant must pay as the tenancy is terminated**

Rent Owing To Move Out Date	\$15,689.32
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$1,000.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$2,200.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$55.60
<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$12,619.72</b>

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