



Order under Section 69 Residential Tenancies Act, 2006

Citation: Halabi v Macdonald, 2023 ONLTB 25494

Date: 2023-03-09

File Number: LTB-L-045439-22

In the matter of: Upper, 40 ASKEW ST
LEAMINGTON ON N8H1X7

Between: M.H. Management and Malak Halabi Landlords

And

Gregory James Macdonald and Shashanah Tenants
M. Macdonald

M.H. Management and Malak Halabi (the 'Landlord') applied for an order to terminate the tenancy and evict Gregory James Macdonald and Shashanah M. Macdonald (the 'Tenants') because the Tenants did not pay the rent that the Tenant owes.

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

The Landlord's Legal Representative, Mark Sarkis Gebriel, and the Tenant Christopher Macdonald attended the hearing.

The Legal Representative for Christopher Macdonald, Tori Lee Jenkins, also attended the hearing.

Determinations:

Preliminary Issues

1. The Tenant's Legal Representative for Christopher Macdonald (CM) submitted that CM should be removed as a Tenant from the hearing documents because he is an occasional occupant, not a Tenant; he did not sign the lease; has never paid rent; lives with his partner elsewhere. He is the Tenants' father, but he is not a Tenant.
2. The Tenant Shashanah Macdonald (SM) testified that their father does not live in the rental unit, he stays sometimes to help them out with the dog and her health issues. CM is not on

the lease, the Landlord added him as a Tenant for this hearing. CM lives with his partner most of the time, she believes the address is Elliot Street in Leamington.

3. CM's Representative clarified that CM is currently couch surfing and does not have a permanent address; he is on the waiting list for subsidized housing.
4. The Landlord's Legal Representative submitted that CK should be deemed a Tenant even though he is not on the lease because he corresponds with the Landlord as though he is a Tenant, for example with complaints or issues to raise about the tenancy.
5. SM denied the Landlord's Legal Representative's submission and testified that CM has only spoken to the Landlord when she has asked him to because she does not like dealing with the Landlord or the legal representative.
6. For the reasons that follow, I find CH is not a Tenant. The best evidence before me is SM's, all other is hearsay; SM testified that CM does not live in the rental unit and has only spoken to the Landlord at her request. Accordingly, CM's name has been removed from the hearing paperwork.
7. SM also raised the following as preliminary issues:
8. SM's name is spelt incorrectly in the hearing paper work, therefore, the Landlord's application should be dismissed. This request was denied as a typographical can be amended. SM's name was amended to the above spelling.
9. Eviction cannot be granted pursuant to section 83(3)(a) of the *Residential Tenancies Act, 2006* (the 'Act') because the Landlord is in serious breach of its obligations under the Act, both for maintenance and behaviour. This request was denied. Such an assessment requires the necessary proof to back up the allegations of serious breach and there is no evidence on file. Pursuant to the Rules of Practice, parties are required to file their evidence no later than 7-days prior to the hearing date.
10. The application should be dismissed because the Tenants did not receive the hearing documentation until recently; it went to the Tenants on the lower floor, not their unit #2. The Landlord's Legal Representative submitted that the units are not done with numbers, the mailboxes are marked upper and lower, and the mailing addresses have always been this. This request was denied as pursuant to Rule 3.8(a) a document is deemed served 5 days from the date of mailing; here the documents were mailed using the normal mailing address.
11. The quantum of arrears was also disputed, but as SM agreed no rent had been paid to the Landlord, this issue was also dismissed.

Merits

12. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment 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.

13. As of the hearing date, the Tenant was still in possession of the rental unit.
14. The lawful rent is \$1,600.00. It is due on the 1st day of each month.
15. 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.
16. The Tenants have not made any payments since the application was filed.
17. The rent arrears owing to March 31, 2023 are \$24,000.00.
18. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
19. There is no last month's rent deposit.

I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. No rent has been paid to the Landlord since the application was filed and the arrears are now in excess of \$20,000.00; the Landlord has not received any rent from January 2022 to date. If the Tenants wish to raise their own issues with the tenancy and/or Landlord, they have the right to pursue their own application(s) under the Act.

20. This order contains all the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenant voids this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$24,186.00 if the payment is made on or before March 20, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants 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 March 20, 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 Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before March 20, 2023**

5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$22,691.20. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenants 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 move out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before March 20, 2023, the Tenants will start to owe interest. This will be simple interest calculated from March 21, 2023 at 5.00% annually on the balance outstanding.
8. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
9. If the unit is not vacated on or before March 20, 2023, then starting March 21, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 March 21, 2023.

March 9, 2023

Diane Wade

Date Issued

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 September 21, 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 March 20, 2023

Rent Owing To March 31, 2023	\$24,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$24,186.00

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

Rent Owing To Hearing Date	\$22,505.20
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	- \$
Less the amount of the interest on the last month's rent deposit	- \$0.00
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$22,691.20
Plus daily compensation owing for each day of occupation starting March 3, 2023	\$52.60 (per day)