



Order under Section 69 Residential Tenancies Act, 2006

Citation: Berg v Shukla, 2023 ONLTB 18571

Date: 2023-02-09

File Number: LTB-L-027028-22

In the matter of: 306, 438 RICHMOND ST W
TORONTO ON M5V3S6

Between: Judith Berg Landlord

And

Abaolema Memi and Jazz Shukla Tenants

Judith Berg (the 'Landlord') applied for an order to terminate the tenancy and evict Abaolema Memi and Jazz Shukla (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on January 16, 2023.

The Landlord's Representative Leo Corsetti and the Tenant Abaolema Memi attended the hearing. The Tenant Jazz Shukla did not.

Determinations:

Joint Tenancy

1. The Tenant Abaolema Memi ('A.M') testified that she and the other tenant have a tenancy in common as opposed to a joint tenancy. The difference is that in a joint tenancy both tenants are jointly responsible for the rental unit. Whereas with a tenancy in common both tenants have separate arrangements and obligations with the Landlord. A.M testified that she has been paying her share of the rent and it is the other tenant who is in arrears.
2. The lease for the rental unit is a standard form lease with both Tenants listed and there is no mention that the arrangement is a tenancy in common.
3. Karen Forbes (K.F) is the Landlord's property assistant who dealt with the paperwork at the commencement of the tenancy. The Tenant A.M testified that before she signed the lease, she indicated to K.F that she wanted the tenancy to be a tenancy in common and that she wants to be responsible for paying her rent separately from her roommate. She testified that K.F responded that rent could be paid separately. A.M was unable to recall whether K.F explicitly used the words "tenancy in common".
4. The Tenant A.M testified that she has a recording of her conversation with K.F but she would have to look for it. As A.M did not have her recording ready to enter into evidence it was not considered.

5. K.F the Landlord's Property Assistant testified that it was always her intention for the Tenants to enter a joint tenancy. She testified that she understood the Tenants to be jointly responsible for the unit. K.F testified that she did not know what a tenancy in common is.
6. On a balance of probabilities, I find that the Tenants are in a joint tenancy. This is because the lease is the standard form lease used in joint tenancies. A joint tenancy is also the most common form of tenancy, and it is more likely than not, absent a clear intention to the contrary, that the parties entered into a joint tenancy. There is no written record of the parties agreeing to a tenancy in common.
7. Additionally, K.F testified that she did not know what a tenancy in common is. I found her to be credible in that regard. I also found the Tenant A.M to be credible that she indicated that she wanted a tenancy in common when speaking to K.F. However, it is more likely than not that what occurred is that A.M told K.F that she wanted a tenancy in common and explained that she wanted the rent to be paid separately. K.F did not know what that meant but said rent payments can be made separately. However, what K.F meant by this is that the payments could come from separate accounts but ultimately both tenants are still jointly responsible for the rent. I find on a balance of probabilities that there was no meeting of the minds between the parties to enter into a tenancy in common. A.M's intention alone is not enough. A.M needed to get the agreement in writing to solidify the party's intentions.

The Application

8. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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.
9. As of the hearing date, the Tenants were still in possession of the rental unit.
10. The lawful rent is \$2,205.00. It is due on the 1st day of each month.
11. Based on the Monthly rent, the daily rent/compensation is \$72.49. This amount is calculated as follows: \$2,205.00 x 12, divided by 365 days.
12. The Tenants have paid \$13,072.00 to the Landlord since the application was filed.
13. The rent arrears owing to January 31, 2023 are \$7,763.00.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The Landlord collected a rent deposit of \$2,179.00 from the Tenants 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.
16. Interest on the rent deposit, in the amount of \$28.54 is owing to the Tenants for the period from September 7, 2021 to January 16, 2023.
17. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including that the Landlord sent the Tenants a letter regarding a repayment agreement on May 17, 2022 and September 23,

2022 and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. Additionally, the Tenant A.M requested that the eviction be delayed until February 1, 2023. The default date of eviction from the issuance date of this order is February 20, 2023 which gives the Tenants longer to vacate than requested.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants 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:**
 - \$10,154.00 if the payment is made on or before February 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 February 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 Tenant must move out of the rental unit on or before February 20, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$4,696.30. 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 Tenants shall also pay the Landlord compensation of \$72.49 per day for the use of the unit starting January 17, 2023 until the date the Tenant moves out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before February 20, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 21, 2023 at 5.00% annually on the balance outstanding.
8. If the unit is not vacated on or before February 20, 2023, then starting February 21, 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 February 21, 2023.

February 9, 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 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 February 20, 2023

Rent Owing To February 28, 2023	\$23,040.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$13,072.00
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	\$10,154.00

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

Rent Owing To Hearing Date	\$19,789.84
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$13,072.00
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	- \$2,179.00
Less the amount of the interest on the last month's rent deposit	- \$28.54
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	\$4,696.30
Plus daily compensation owing for each day of occupation starting January 17, 2023	\$72.49 (per day)