



Order under Section 69 Residential Tenancies Act, 2006

Citation: Asmal v Mcwhirter, 2023 ONLTB 20207

Date: 2023-02-08

File Number: LTB-L-020146-22

In the matter of: 69 MUNRO CIR
BRANTFORD ON N3T0R5

Between: Imran Asmal Landlord

And

Teneshia Elizabeth Mcwhirter Tenant

Imran Asmal (the 'Landlord') applied for an order to terminate the tenancy and evict Teneshia Elizabeth Mcwhirter (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 application).

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Landlord has entered into an agreement of purchase and sale of the rental unit and the purchaser requires possession of the rental unit for the purpose of residential occupation (L2 application).

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

The Landlord's legal representative, Shikha Kapoor attended the hearing.

As of 9:56 a.m. the Tenant was not present or represented at the hearing

The Landlord called as a witness, Maryam Kamil (MK), the purchaser.

The Landlord provided the Board with the agreement of purchase and sale as a post-hearing submission, as requested by the Board.

Determinations:

L1 application: Arrears of Rent

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice).
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$2,050.00. It is due on the 1st day of each month.

4. Based on the monthly rent, the daily rent/compensation is \$67.40. This amount is calculated as follows: \$2,050.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The Landlord waives the rent for April 2022 as compensation of one month's rent for the Form N12.
7. The rent arrears owing to January 31, 2023 are \$28,700.00.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$2,050.00 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.
10. Interest on the rent deposit, in the amount of \$69.81 is owing to the Tenant for the period from February 22, 2021 to January 9, 2023.
11. 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 Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

L2 application: Purchaser's Own Use

12. This is a month to month tenancy. The rent is due on the 1st day of each month.
13. The rental unit is a house with four bedrooms. The Tenant rents the entire house.
14. The Landlord waives the rent for April 2022 as compensation to the Tenant of one month's rent.
15. The Landlord and the purchaser entered into an agreement of purchase and sale on February 20, 2022.
16. The purchaser, MK testified that the closing date was March 15, 2022 and the closing has been extended a couple of times, namely to September 15, 2022 and December 10, 2022. The closing date has been extended to February 28, 2023.
17. MK also testified that she intends to live in the unit as her primary residence with her spouse and her two daughters.
18. Subsection 49(1) of *Residential Tenancies Act, 2006* (the 'Act') requires the Landlord to establish two points to support this application for termination of the tenancy. First, the Landlord must establish that they entered into an agreement of purchase and sale for the

property; second, the Landlord must establish that the purchaser in good faith requires possession of the property for residential occupation by the purchaser.

19. Based on the uncontested evidence before me, I am satisfied on a balance of probabilities, that the Landlord and the purchaser entered into a genuine agreement of purchase and sale for the rental unit. Based on MK's testimony, I am also satisfied on a balance of probabilities, that the purchaser in good faith intends to move into the rental unit for residential occupation.
20. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

Order regarding L1 application

1. The tenancy between the Landlord and the Tenant is terminated as of February 19, 2023. The Tenant can void the order for arrears of rent.
2. **The Tenant may void this order for arrears of rent by paying to the Landlord or to the LTB in trust:**
 - \$30,936.00 if the payment is made on or before February 19, 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 for arrears of rent 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 19, 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 for arrears of rent the Tenant must move out of the rental unit on or before February 19, 2023**
5. If the Tenant does not void the order for arrears, the Tenant shall pay to the Landlord \$25,322.79. This amount includes rent arrears owing up to the date of the hearing, less compensation of one month's rent 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 \$67.40 per day for the use of the unit starting January 10, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before February 19, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 20, 2023 at 5.00% annually on the balance outstanding.
8. If the unit is not vacated on or before February 19, 2023, then starting February 20, 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 20, 2023.

Order regarding L2 application

10. Despite paragraphs 2, and 3, above, the tenancy between the Landlord and the Tenant is terminated as of February 19, 2023. The Tenant must move out of the rental unit on or before February 19, 2023.
11. If the unit is not vacated on or before February 19, 2023, then starting February 20, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
12. 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 20, 2023.

February 8, 2023

Date Issued

Debbie Mosaheb

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 August 20, 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 for arrears of rent if the payment is made on or before February 19, 2023

Rent Owing To February 28, 2023	\$32,800.00
Less the amount for compensation of one month's rent (April 2022) for Form N12	-\$2,050.00
Application Filing Fee	\$186.00
Total the Tenant must pay to void the order for arrears of rent	\$30,936.00

B. Amount the Tenant must pay to the Landlord as the tenancy is terminated

Rent Owing To Hearing Date	\$29,306.60
Less the amount for compensation of one month's rent (April 2022) for Form N12	-\$2,050.00
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$2,050.00
Less the amount of the interest on the last month's rent deposit	- \$69.81
Total amount owing to the Landlord	\$25,322.79
Plus daily compensation owing for each day of occupation starting January 10, 2023	\$67.40 (per day)