



Order under Section 69 Residential Tenancies Act, 2006

Citation: Ikram v Marandola, 2023 ONLTB 18688

Date: 2023-02-08

File Number: LTB-L-003967-22

In the matter of: Unit 18, 60 CANTERBURY DR
ST CATHARINES ON L2P0E7

Between: Shabana Ikram Landlord

and

John Marandola and Sheila Marandola Tenants

Shabana Ikram (the 'Landlord') applied for an order to terminate the tenancy and evict John Marandola and Sheila Marandola (the 'Tenants') and Kateri Marandola (the 'Guarantor') because the Tenants did not pay the rent the Tenants owe.

This application was heard by videoconference on July 21, 2022 and adjourned due to scheduling overflow on conditions specified in Order LTB-L-003967-22 issued August 3, 2022.

At the return on December 8, 2022, the Landlord's Legal Representative, Cuiwen Hui, the Landlord, the Tenants' and Guarantor's Legal Representative, Kim Farrell, the Tenant, John Marandola, on behalf of both Tenants, and the Guarantor, Kateri Marandola, attended the hearing.

Robert Greene was a witness for the guarantor whose evidence was submitted by way of affidavit. He attended to be cross-examined; although such opportunity was declined on behalf of the Landlord.

Determinations:

Preliminary Issue – Kateri Marandola is not a Tenant

1. Whether Kateri Marandola is properly named as a tenant was a preliminary issue.
2. KM has never paid rent at the rental unit and the Landlord admitted rent was always received from JM.
3. The lease is signed by the Tenants and their daughter, KM. The lease identifies KM as a tenant and does not indicate she is a guarantor. The Landlord relied on the lease as proof that KM was a tenant.
4. The Landlord testified he was advised by his Agent when the tenancy was being formed that there were three tenants on the agreement. He testified they provided paystubs,

especially the daughter, and said he was told they had sufficient funds from the sale of their house.

5. KM testified her mother identified the rental unit as a property she was interested in and she accompanied her father to view it. KM confirmed she submitted proof of employment to secure the lease.
6. KM testified she signed the lease with the intention of serving as a guarantor for two years. She testified she has never resided at the rental unit and has lived in her home – which is distinct from the rental unit - for over a decade.
7. KM testified the lease was presented to her for signature by the Agent engaged by the Landlord, Charlene Klukas. She testified this was an unfamiliar process to her and she did not review the lease when it was presented to her as she was helping her parents. She testified it was her understanding she was not a tenant and was only signing to secure the lease for her parents who were experiencing difficulties. She testified the Agent represented to her she would only be a guarantor for two years and she trusted what she was being told.
8. The Landlord admitted he was not present when KM signed the lease nor for any discussions when the lease was signed between his Agent and KM.
9. In May 2021 a tenancy referral letter drafted by the Tenants but signed by the Landlord identifies only JM and SM as the Tenants. Consistent with the position advanced by KM, the letter also indicates that their lease holds a guarantor due to their current credit situation.
10. The Landlord first testified he read and understood the referral letter before he signed it. He subsequently testified he did not understand what was meant by guarantor and trusted what was in the lease.
11. KM's evidence was that she signed the lease understanding she was signing as a guarantor following the oral representation of the Landlord's Agent to this effect. The Landlord was not present at the time KM signed the lease and the Landlord's Agent was not present to testify. The evidence of what the Landlord was told by his Agent is hearsay. While hearsay is admissible at the Board, it is generally entitled to less weight than direct evidence, such as KM's evidence that the Landlord's Agent advised her she was signing the lease as a guarantor.
12. KM admitted she provided proof of employment and provided essentially uncontested evidence that she has and continues to reside elsewhere. It was admitted she has never paid rent. In addition, the above letter of referral is consistent with her evidence. While it is possible to rent a unit and still live somewhere else, in the above circumstances, I accept KM's evidence she signed the lease as a guarantor.
13. As a result, I find KM is a guarantor and is not a tenant. The application is amended to remove KM as a tenant.

14. In finding that KM is a guarantor and not a tenant, I make no finding on the issue of how long KM agreed to serve as guarantor.

L1 Determinations

15. 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.
16. As of the hearing date, the Tenants were still in possession of the rental unit.
17. The lawful rent is \$1,800.00. It is due on the 20th day of each month.
18. Based on the Monthly rent, the daily rent/compensation is \$59.18. This amount is calculated as follows: \$1,800.00 x 12, divided by 365 days.
19. The Tenants have not made any payments since the application was filed.
20. The rent arrears owing to December 19, 2022 are \$27,000.00. The Tenants did not dispute the arrears claimed by the Landlord.
21. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
22. The Landlord collected a rent deposit of \$1,800.00 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.
23. Interest on the rent deposit, in the amount of \$37.22 is owing to the Tenant for the period from March 20, 2020 to December 8, 2022.

Section 83 Considerations

24. Having considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), I find that it would not be unfair to postpone the eviction until March 19, 2023 pursuant to subsection 83(1)(b) of the Act.
25. The Tenant testified they did not pay rent as they did not have enough money. The Tenant testified he started receiving CPP at the end August and OAS in late October. His and his wife's combined yearly income is currently approximately \$55,000.00.
26. The Tenant admitted that despite starting to receive income at the end of the summer and early fall he had not paid rent as directed to in Order LTB-L-003967-22-IN dated August 3, 2022. He testified he did not make payments due to the lack of security in knowing whether they would remain in the rental unit and concern about what to do if evicted.

27. The Tenant has a son with mental health issues who resides near the rental unit and for whom he is his sole support. His son cannot live with them, but he testified he must reside nearby to provide extended caregiving and testified he brings him his food every day.
28. The Tenant requested the Board exercise its discretion and order a payment plan in the amount of \$500.00 monthly until the arrears are paid in full. As at the date of hearing, paying off the arrears in accordance with the proposed payment plan would take approximately 4.5 years.
29. The Tenant also testified he has sought financing, which, if granted would permit him to clear the entirety of the arrears. He estimated he would know whether this was approved within 60 days. The Tenant testified he would like to bring his arrears into good standing and continue residing at the rental unit.
30. The Tenant testified the Landlord had not attempted to engage in any payment plan negotiations prior to the hearing. While the Landlord's Representative asserted this was not true, no evidence was admitted that contradicted this. The Tenant admitted he had also not asked the Landlord for a payment plan.
31. The Tenant testified they would have no other place to live if evicted; although he admitted he did not know if he could reside with KM from which I understood this question had not been asked. The Tenant testified they have engaged a real estate agent to help them find a new place to live but they have not been successful. The Tenant's Representative submitted it would take the Tenants 6 months to find a new place to live.
32. The Landlord's Representative submitted the Tenants' proposed payment plan was not reasonable although the Landlord was amenable to providing the Tenants with two months to pay the arrears.
33. The Landlord testified he is not working and his family are living off the rent from the property. He testified his wife is ill, they have significant debt and have to pay a lot of interest on this debt, and so are in a critical situation. The Landlord wishes to sell the property and testified he needs the property vacant to obtain photographs as he indicated this has proven problematic in the past.

Analysis

34. I have not given the Landlord's evidence about wishing to sell the property weight as not only is this an application regarding arrears I do not find it necessary for a property to be vacant to sell it nor to obtain photographs and further, that is not a recognized reason under the Act for which a Landlord may terminate a tenancy.
35. Pursuant to section 83(6) of the Act, whether the Landlord has attempted to negotiate an agreement with a tenant respecting the arrears before the hearing is a factor to be considered under section 83. While the parties do not agree on whether there were such discussions, it seems unlikely to me that the parties would have been able to reach an agreement in any event given the amount of arrears, the fact the Tenant admitted they

could not afford to pay rent until the early fall and the Landlord's objection to the 4.5 year repayment plan proposed by the Tenants.

36. The arrears are significant and the Landlord testified to the financial strain caused by the Tenants ongoing failure to pay rent. In the above circumstances, I do not find the proposed payment plan of paying the arrears off over 4.5 years reasonable. I also note that while concern for their future is understandable, the Tenants did not demonstrate good faith by attempting to pay any amount towards their rent or arrears since their income increased.
37. This application was heard on December 8, 2022. It may be that the Tenants' financing has already been received and the arrears cleared. However, in the event the Tenants have not received this financing I do not find that providing an additional 6 months to vacate is reasonable and note that if the Tenants continue not to pay rent, this would result in arrears above the jurisdiction of the Board. Nonetheless, given the importance of living close to the son, I am giving the Tenants additional time to void this order or find a new place to live.

It is ordered that:

1. The application is amended to remove Kateri Marandola as a tenant.
2. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
3. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$30,786.00 if the payment is made on or before February 19, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$32,586.00 if the payment is made on or before March 19, 2023. See Schedule 1 for the calculation of the amount owing.
4. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after February 28, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
5. **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 19, 2023**
6. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$24,673.20. 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.
7. The Tenants shall also pay the Landlord compensation of \$59.18 per day for the use of the unit starting December 9, 2022 until the date the Tenants move out of the unit.

8. If the Tenants do not pay the Landlord the full amount owing on or before February 19, 2023, the Tenants will start to owe interest. This will be simple interest calculated from February 20, 2023 at 5.00% annually on the balance outstanding.
9. If the unit is not vacated on or before March 19, 2023, then starting March 20, 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 20, 2023.

February 8, 2023
Date Issued

Rebecca Case
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 1, 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 19, 2023

Rent Owing To February 19, 2023	\$30,600.00
Application Filing Fee	\$186.00
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
Total the Tenant must pay to continue the tenancy	\$30,786.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before March 19, 2023

Rent Owing To March 19, 2023	\$32,400.00
Application Filing Fee	\$186.00
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
Total the Tenant must pay to continue the tenancy	\$32,586.00

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

Rent Owing To Hearing Date	\$26,324.42
Application Filing Fee	\$186.00
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	- \$1,800.00
Less the amount of the interest on the last month's rent deposit	- \$37.22
Total amount owing to the Landlord	\$24,673.20
Plus daily compensation owing for each day of occupation starting December 9, 2022	\$59.18 (per day)