



Order under Section 69 Residential Tenancies Act, 2006

Citation: SCHEMBRI PROPERTY MANAGEMENT CORP v Alexander, 2023 ONLTB 18780

Date: 2023-02-06

File Number: LTB-L-018151-22

In the matter of: BUILDING D - UNIT PH03, 275 LARCH ST
WATERLOO ON N2L3R2

Between: SCHEMBRI PROPERTY MANAGEMENT Corp Landlord

And

Joshua Alexander Tenant

SCHEMBRI PROPERTY MANAGEMENT CORP (the 'Landlord') applied for an order to terminate the tenancy and evict Joshua Alexander (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 application).

SCHEMBRI PROPERTY MANAGEMENT CORP (the 'Landlord') applied for an order to terminate the tenancy and evict Joshua Alexander (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises;
- the Tenant has been persistently late in paying the Tenant's rent.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

The Landlord also claimed charges related to NSF cheques.

SCHEMBRI PROPERTY MANAGEMENT CORP (the 'Landlord') also applied for an order requiring Joshua Alexander (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest. (L2 application)

This application was heard by videoconference on February 1, 2023 .

Only the Landlord's Representative, Elizabeth Anani attended the hearing. Witnesses for the Landlord included Sylvia Gutierrez and Rachel Yee (RY). The Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. The

Board emailed the Notice to the Tenant on January 18, 2022 and the Landlord also mailed disclosure of evidence they intended to rely on at the hearing with a copy of the Notice of Hearing and application to the Tenant on January 9, 2023. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence

This application was heard by videoconference on February 1, 2023.

Determinations:

1. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,600.00. It is due on the day day of each month.
4. 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.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to February 28, 2023 are \$32,000.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,600.00 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.

L2 application:

9. The Landlord is not pursuing administrative charges for automatic payments that were not processed due to insufficient funds.
10. The Landlord requested the consent of the Board to withdraw the N8 Notice issued to the Tenant which I granted.
11. The Tenant replaced the locking device giving entry to the rental unit and the Landlord restored the locking device on November 18, 2021, and again on January 11, 2022. RY testified the Landlord did not incur replacement costs for the locking device since the Tenant had the device in his possession which was returned and restored by the Landlord. The Landlord invoiced the Tenant for their time in the amount of \$565.00. According to the N5 Notice the Tenant left the door unlocked and the Landlord was able to do their quarterly inspection on February 22, 2022. RY testified that the Tenant changed the locking device a third time on November 16, 2022. The Tenant having changed the lock to the entrance way without giving the Landlord a key substantially interferes with Landlord's rights and interest having to waste their time repeatedly to restore the lock.

12. The Landlord provided a photograph taken November 16, 2022 of the entrance door which is not subject to this application and not considered since there was no allegations of damage to the door on the L2 application or the N5 Notice.
13. The Landlord also applied for undue damage to the Landlord's property in the amount of \$565.00. Section 89 of the Act only contemplates physical damage wilfully or negligently caused by the Tenant to the Landlord's property. RY testified the Tenant had the lock in his possession which was returned to the Landlord and confirmed that the lock did not require replacement but costs were for the Landlord's time. The application under section 89 for undue damage is dismissed.
14. 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.
15. The Tenant has paid rent for 19 months having paid only first and last month rent.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$32,186.00 if the payment is made on or before February 17, 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 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 17, 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 the Tenant must move out of the rental unit on or before February 17, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$29,038.60. 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 Tenant shall also pay the Landlord compensation of \$52.60 per day for the use of the unit starting February 2, 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 17, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 18, 2023 at 5.00% annually on the balance outstanding.

8. If the unit is not vacated on or before February 17, 2023, then starting February 18, 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 18, 2023.

L2 application:

10. If the Tenant voids the L1 portion of this order, the Tenant shall not change or tamper with the locking device giving entry to the rental unit.
11. If the Tenant fails to comply with the conditions set out in paragraph 10 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlords must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.

February 6, 2023

Date Issued

Sandra Macchione

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 18, 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 17, 2023

Rent Owing To February 28, 2023	\$32,000.00
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	\$32,186.00

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

Rent Owing To Hearing Date	\$30,452.60
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	- \$1,600.00
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	\$29,038.60
Plus daily compensation owing for each day of occupation starting February 2, 2023	\$52.60 (per day)

