



Order under Section 69 Residential Tenancies Act, 2006

Citation: Homestead Land Holdings Limited v Dercioglu, 2023 ONLTB 14734

Date: 2023-01-23

File Number: LTB-L-024232-22

In the matter of: 1409, 5 BROCKLEY DR
SCARBOROUGH ON M1P3J2

Between: Homestead Land Holdings Limited Landlord

And

Imran Dercioglu Tenants

Homestead Land Holdings Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Imran Dercioglu (the 'Tenant') because the Tenant did not pay the rent that the Tenants owe.

This application was heard by videoconference on January 4, 2023.

The Landlord's Legal Representative C. Myers and former tenant Mohammed Mahmood (MM) attended the hearing. Imran Dercioglu did not attend the hearing.

Determinations:

Mohammed Mahmood is not a Tenant in Possession of the Rental Unit

1. Mohammed Mahmood testified that he was originally the Tenant in this rental unit when the tenancy began on December 1, 2012 but on June 30, 2020, he vacated the rental unit and the other named Tenant Imran Dercioglu, took possession of the rental unit as the sole Tenant in possession. He testified that he emailed the Landlord's Agent on or around May 21, 2020 that he will be vacating the rental unit on June 30, 2020. He further added that the Landlord's Agent agreed to allot his unit to one of his neighbours at the time Imran Dercioglu. The Landlord's Agent Fauzia Khan who is the Property Manager asked the new Tenant to provide all his paperwork but never took MM off the lease even though he

requested for it. Not knowing his rights as a Tenant, he assumed since the new Tenant has taken over, his lease was terminated until he was served the notice for rent arrears. He further added that on receiving the notice, he sent the Landlord's Legal Representative Mr. Kevin Anderson an email requesting him to take him off the lease.

2. The Tenant stated that he had bought his own place and moved into his own property that he had bought , so he had no connection with the rental unit at all. He moved out completely before the new Tenant moved in.
3. The Landlord's Legal Representative submitted that the tenancy was never terminated and that the Tenant MM was still responsible for the rent at the rental unit and there was no paperwork to show that his tenancy was terminated.
4. The email thread put into evidence shows that the Tenant and the property manager emailed about adding Imran Dercioglu to the lease along with him. The email also states that MM will be moving out and the other Tenant will be moving in around June 30, 2020.
5. The Landlord filed the application on April 28, 2022. On that date, section 87(1) of the *Residential Tenancies Act, 2006* (the 'Act') provided that a landlord could only file a rent arrears application against a tenant in possession of the rental unit.
6. The leading case concerning when a tenant is in possession of a rental unit for the purpose of the Board's jurisdiction to order a tenant to pay arrears of rent is the Court of Appeal decision *1162994 Ontario Inc. v Bakker et al* CanLII 59995 (ON CA) ("Bakker"). In that case, the tenants entered into a lease for a rental unit. Bakker, Crane and Klemos moved out, leaving Holmes in possession of the unit. After Bakker, Crane and Klemos moved out, rent arrears accrued. The Landlord sought to terminate the tenancy and obtain an order for payment of arrears of rent against all 4 Tenants. The Court of Appeal held that the Board does not have jurisdiction to order the payment of arrears of rent against tenants who are not in possession of the rental unit at the time the application is brought.
7. In this case I find that MM was not in possession of the rental unit on April 28, 2022 because he testified that he had moved out completely out of the rental unit into his own property. Therefore, the Board does not have jurisdiction to order rent arrears against MM. The application can continue against the remaining Tenant in possession of the rental unit. Mohammed Mahmood will be removed as a respondent to this application.
8. While s.87(1) of the Act has been amended to allow the Board to issue an order for rent arrears against former tenants, this expanded jurisdiction only applies where the former tenant vacated on or after September 1, 2021. Section.87(1)(b) gives the Board authority to issue orders against former tenants if the Landlord files their application within one-year of the former tenant vacating the rental unit and the tenant vacated the rental unit on or after September 1, 2021. In this case MM vacated the rental unit well before September 1, 2021 and the Landlord did not file this application within one year of the date MM vacated.

Board's Monetary Jurisdiction

9. The Landlord's application claims the total amount of \$48,935.63, which represents the arrears of rent for the period ending January 31, 2023 (\$48,749.63), plus the application filing fee (\$186.00).
10. The amount claimed by the Landlord exceeds the monetary jurisdiction of the Board. Subsection 207(1) of the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17, limits the monetary jurisdiction of the Board to that of the Small Claims Court; that amount is \$35,000.00.
11. The Landlord's representative was also advised of section 207(3) of the Act which states if the party proceeds to obtain a Board order at the maximum amount, that party extinguishes the right in excess of the Board's monetary jurisdiction. The Landlord's representative acknowledged this and that the maximum amount the Board can order is to \$35,000.00.

L1 Application: Rent arrears

12. 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.
13. As of the hearing date, the Tenant Imran Dercioglu was still in possession of the rental unit.
14. The lawful rent is \$1,621.73. It is due on the 1st day of each month.
15. Based on the Monthly rent, the daily rent/compensation is \$53.32. This amount is calculated as follows: \$1,621.73 x 12, divided by 365 days.
16. The Tenant has not made any payments since the application was filed.
17. The rent arrears owing to January 31, 2023 are \$48,749.63.
18. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
19. The Landlord collected a rent deposit of \$1,599.87 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.
20. Interest on the rent deposit, in the amount of \$19.64 is owing to the Tenant for the period from December 1, 2021 to January 4, 2023.
21. 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.

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:**
 - \$35,186.00 if the payment is made on or before February 3, 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 4, 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 3, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$35,186.00. 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 \$53.32 per day for the use of the unit starting January 5, 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 3, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 4, 2023 at 5.00% annually on the balance outstanding.
8. If the unit is not vacated on or before February 3, 2023, then starting February 4, 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 4, 2023.

January 23, 2023

Date Issued

Sheena Brar
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 3, 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.

2023 ONLTB 14734 (CanLII)

**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 3, 2023

Rent Owing To January 31, 2023	\$48,749.63
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 owes the Landlord	\$48,935.63
Total the Tenant must pay to the Landlord as per Board's jurisdictional limit	\$35,186.00

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

Rent Owing To Hearing Date	\$47,341.18
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	- \$1,599.87
Less the amount of the interest on the last month's rent deposit	- \$23.03
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	\$45,904.28
Plus daily compensation owing for each day of occupation starting January 5, 2023	\$53.32 (per day)
Total amount owing to the Landlord as per Board's jurisdictional limit	\$35,186.00