



**Order under Sections 69, 88.1, and 89
Residential Tenancies Act, 2006**

Citation: Mitongo v Karuvatill, 2023 ONLTB 15061

Date: 2023-01-16

File Number: LTB-L-023231-22

In the matter of: BASEMENT-UNIT 2, 3463 MULCASTER RD
MISSISSAUGA ON L5L5B3

Between: Nathalie Mitongo Landlords
Serge Tshiunza

And

Jasil Zain Karuvatill Tenant

2023 ONLTB 15061 (CanLII)

Nathalie Mitongo and Serge Tshiunza (the 'Landlords') applied for an order to terminate the tenancy and evict Jasil Zain Karuvatill (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes; and because the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person in the residential complex; used the rental unit or the residential complex in a manner that is inconsistent with use as a residential premises and that has caused or can be expected to cause significant damage; and substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlords in a building that has three or fewer residential units and the Landlords reside in the building.

The Landlords also applied for an order requiring the Tenant to compensate the Landlords for property damage wilfully or negligently caused by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex and for reasonable out-of-pocket expenses incurred as a result of substantially interfering conduct by the Tenant, occupant or guest.

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

The first-named Landlord above, the Tenant, and the Tenant's representative Chantle Marler, attended the hearing

Determinations:

1. The notices of termination on which the application is based are invalid as they fail to identify the rental unit. There are actually two separate units in the basement. I have amended the application to identify the Tenant's as Unit 2.
2. There is no dispute that after the Tenant received the Landlords' notices of termination, he moved out of the rental unit and returned vacant possession to the Landlords on June 6, 2022. Despite the invalidity of the notices, the Tenant's acceptance of the Landlords'

requests that he vacate constitutes an implied agreement to terminate effective June 6, 2022.

3. The parties agree that the Tenant has failed to pay rent for the period April 1, 2022 to June 6, 2022. That amount is calculated as follows:

For the months of April and May, 2022 – $2 \times \$650.00 = \$1,300.00$; plus

For the period June 1 to June 6, 2022 – $6 \text{ days} \times [\$650.00/\text{month} \times 12 \text{ months} \div 365 \text{ days/year}] = \128.22 ;

For a total of \$1,428.22.

4. The Landlords collected a rent deposit of \$650.00 from the Tenant and this deposit is still being held by the Landlords. The rent deposit shall be applied to the arrears of rent owing because the tenancy terminated.
5. Interest on the rent deposit, in the amount of \$5.26 is owing to the Tenant for the period from October 4, 2021 to June 6, 2022. This amount is calculated as follows:
 $246 \text{ days} \times [(1.2\% \times \$650.00) \div 365 \text{ days/year}] = \5.26 .
6. The Landlords incurred costs of \$186.00 for filing the application and are entitled to reimbursement of those costs.
7. The balance of the application is dismissed. The Landlords' claims made pursuant to ss. 88.1 and 89 do not on their face describe facts that support the issuance of any order for compensation or damages.
8. The Tenant seeks a delay of six months with respect to payment of the amount owing. This is because the Tenant has his own T2/T6 application before the Board (in Board file LTB-T-022092-22) and anticipates set off. He wishes to avoid enforcement of the amount owing until that application is dealt with.
9. Although the Board has the power to grant the Tenant's request pursuant to s. 204(1) of the Act, I am not prepared to do so here. Given the wording of s. 204(1) the issue is whether it would be fair to do as the Tenant requests. The Tenant does not deny owing the amount ordered herein, his own application may not be successful, he does not claim enforcement will cause him hardship, and he could have withdrawn his own application and raised his claims under s. 82 if he wished for the matters to be dealt with together. As a result, I am not satisfied it would be fair to delay enforcement of the debt owing.
10. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlords and the Tenant terminated as of June 6, 2022, the date the Tenant moved out of the rental unit
2. The Tenant shall pay to the Landlords \$958.96. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application.

The rent deposit and interest the Landlords owe on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.

3. If the Tenant does not pay the Landlords the full amount owing on or before January 27, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 28, 2023 at 5.00% annually on the balance outstanding.

January 16, 2023

Date Issued

Ruth Carey

Vice Chair, Landlord and Tenant Board

15 Grosvenor St, 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

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

Rent Owing To Move Out Date	\$1,428.22
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	- \$650.00
Less the amount of the interest on the last month's rent deposit	- \$5.26
Total amount owing to the Landlord	\$958.96

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