



Order under Section 69 Residential Tenancies Act, 2006

Citation: Brak v Phillips, 2023 ONLTB 15051

Date: 2023-01-16

File Number: LTB-L-024271-22

In the matter of: 198 SHERIDAN ST
BRANTFORD ON N3S4P8

Between: Leonard Brak Landlord

And

Sid Phillips and Christopher Ladd Tenants

Leonard Brak (the 'Landlord') applied for an order to terminate the tenancy and evict Christopher Ladd and Sid Phillips (the 'Tenants') because the Tenants did not pay the rent that the Tenants owed.

This application was heard by videoconference on January 4, 2023. The Landlord and Christopher Ladd attended the hearing.

I heard evidence from the Landlord and Mr. Ladd. I also reviewed and considered a post-hearing legal submission from the Landlord, which I requested.

Determinations:

1. The Landlord served Mr. Ladd with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). Mr. Ladd 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. As of the hearing date, Mr. Ladd was still in possession of the rental unit.
2. There is no dispute that: (a) the monthly rent payable by Mr. Ladd and Sid Phillips was \$1,100.00; (b) from the beginning of the tenancy ODSP paid \$700.00 to the Landlord for Mr. Ladd and, until July of 2021, Mr. Phillips paid \$400.00 directly to the Landlord; and (c) Mr. Phillip did not pay rent after July of 2021 and died on November 18, 2022.
3. The issue I must determine on this application is whether what existed between Mr. Ladd and Mr. Phillips was a joint tenancy or a tenancy-in-common. In a joint tenancy, there is a single tenancy agreement and the tenants are jointly and severally liable for the payment of the entire rent for the rental unit. By contrast, in the case of a tenancy-in-common, although there may be a single tenancy agreement and the tenants may occupy the same premises, each tenant has a separate tenancy with the landlord, and each is individually responsible for the payment of his or her share of the rent for the rental unit. [**Nasser Zabian 11849622 On Inc v Janisse, 2021 CanLII 75547 (ON LTB)**]

4. In a joint tenancy all tenants are jointly and severally liable to pay rent and if one of the tenants fails to pay rent, the other tenant(s) is/are responsible for that payment. This is true even if the tenants have an agreement amongst themselves about how rent payment is to be divided. [**Nasser Zabian 11849622 On Inc v Janisse, 2021 CanLII 75547 (ON LTB)**]
5. Mr. Ladd asserts that the tenancy was in-common and that he was (and is) required to pay only \$700.00 per month and Mr Philips was required to pay \$400.00 per month. The Landlord asserts that the tenancy was joint and Mr. Ladd is was (and is) responsible for the entire \$1,100.00.
6. The applicable tenancy agreement, which was prepared by the Landlord, is a single-page document that says:

2. The agreed rent is \$1100 per month, due on or prior to the first of every month. This is paid jointly, Christopher paying \$700 monthly directly from ODSP, and Sid will pay \$400 monthly. This includes all utilities.
7. Pursuant to section 202 of the *Residential Tenancies Act, 2006* (the 'Act'), I am required to ascertain the real substance of the lease agreement. For that purpose, I am permitted to disregard the outward form of a transaction and may have regard to the pattern of activities relating to the residential complex or the rental unit.
8. Four 'unities' are required for a joint tenancy: unity of title, time, interest, and possession. In other words, the tenants must: (a) take possession under the same tenancy agreement; (b) must have entered into the tenancy agreement at the same time; (c) take the same 'estate'; and (d) take possession of the undivided whole of the rental unit. [**See Moore v Greenhalgh, 2020 CanLII 119284 (ON LTB) and Nasser Zabian 11849622 On Inc v Janisse, 2021 CanLII 75547 (ON LTB)**]
9. I find that the tenancy was joint and that Mr. Ladd is responsible for the entire rent of \$1,100.00, although he may have a claim against Mr. Phillips' estate for his share of the rent up until November 18, 2022¹.. There is no dispute that Mr. Ladd and Mr. Phillips: (a) both took possession of the rental unit under the tenancy agreement; (b) signed tenancy agreement at the same time; (c) had the same 'estate'—a tenancy; and (d) both took possession of the whole of the rental unit. I accept the Landlord's assertion that the division of the rent as between Mr. Ladd and Mr. Philips in the tenancy agreement was a matter of convenience because ODSP was paying Mr. Ladd's rent.
10. Based on my finding, Mr. Ladd owes an additional \$400.00 per month to the Landlord going back to July of 2022. I am not, however, prepared to terminate the tenancy and evict Mr. Ladd based on the arrears
11. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

¹ It is unclear under what circumstances Mr. Phillips stopped paying rent and his obligation to pay rent may have ended before his death. That issue was not before me.

12. Mr. Ladd's only source of income is ODSP. He receives \$1,800.00. While it will no doubt be struggle financially, Mr. Ladd asserts that if I determine that the tenancy is joint, he can (and will) pay the \$1,100.00 rent and can pay an additional \$300.00 per month against the arrears.
13. I am going to preserve the tenancy and order that Mr. Ladd pay to the Landlord an additional \$300.00 per month until the arrears are paid.
14. I appreciate that I am providing Mr. Ladd with a very long period to repay the arrears. However, I accept that Mr. Ladd had a genuine belief that he was responsible for only \$700.00 based on the form of tenancy agreement prepared by the Landlord.
15. I also accept Mr. Ladd's evidence that he attempted to reach an agreement with the Landlord to pay the full rent and to pay something against the arrears, but the Landlord indicated he was not prepared to enter into any agreement with Mr. Ladd because he wanted to see what would happen at this hearing—whether the LTB would terminate the tenancy and evict Mr. Ladd.
16. There was no evidence from the Landlord as to any prejudice that he will suffer as a result of Mr. Ladd paying the arrears over an extended period. Based on Mr. Ladd's evidence as to his financial situation, it is more likely than not that the Landlord would recover little, if any, of the arrears were I to terminate the tenancy and evict Mr. Ladd.

It is ordered that:

1. The lawful rent payable by Mr. Ladd is \$1,100.
2. Mr. Ladd owes the Landlord \$7,786.00 as at January 1, 2023, inclusive of the filing fee. Assuming that Mr. Ladd paid \$700.00 and not pay \$1,100.00 on February 1, 2023, he now owes the Landlord \$8,186.00.
3. Beginning on March 1, 2023 and continuing for 27 months, Mr. Ladd shall, in addition to the monthly rent, pay to the Landlord an additional \$300.00 on the 1st day of each month and on the 1st day or the 28th month, Mr. Ladd shall pay to the Landlord \$86.00.
4. If Mr. Ladd fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by Mr. Ladd to the Landlord pursuant to this order shall become immediately due and owing and the Landlord may, without notice to Mr. Ladd, apply to the Board pursuant to section 78 of the Act for an order terminating the tenancy and evicting Mr. Ladd and requiring that Mr. Ladd pay any new arrears, NSF fees and related charges that became owing.

February 6, 2023
Date Issued

 E. Patrick Shea
 Vice Chair, 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.