



Order under Section 69 Residential Tenancies Act, 2006

Citation: Hazelview Property Services Inc. v Yasar, 2022 ONLTB 13998

Date: 2022-12-06

File Number: LTB-L-019244-22

In the matter of: 319, 135 TYNDALL AVE
TORONTO ON M6K2G4

Between: Hazelview Property Services Inc. Landlord

And

Firat Yasar Tenant

Hazelview Property Services Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Firat Yasar ('FY') (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on October 24, 2022. The Landlord's legal representative, S.Beard and the Tenants attended the hearing.

Determinations:

PRLIMINARY ISSUE

1. For the following reasons, I find that Ahmet Bulut was not in possession at the time the application was filed and therefore is removed as a party to the application. This order reflects that change.
2. During the hearing, FY testified that Ahmet Bulut moved out sometime in 2018. The Landlord submitted that they had no knowledge or written records, aside from some communications from FY requesting Mr. Bulut be removed from the lease agreement.
3. Mr. Bulut testified that after vacating the unit in 2018, he moved to an apartment complex on Sherbourne St in Toronto. He currently resides in Woodbridge and has resided since July 2022.
4. The Ontario Court of Appeal in *1162994 Ontario Inc. v. Bakker* 2004 CanLII 59995 (C.A.) considered the phrase "in possession" and found that possession of a rental unit involves some form of control over that unit. It is demonstrated by factors such as access to, use of, or occupation of the unit. The Court confirmed that the Board's predecessor, the Ontario Rental Housing Tribunal, lacked jurisdiction to make an order against the tenant because the tenant ceased to be in possession of the rental unit two years prior to the rent arrears application being filed:

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[16] A "tenant in possession" must be a tenant as defined in s. 1 of the Act... The phrase "tenant in possession" must refer to a subset of the broader group identified as tenants under the Act. Not all tenants will be "tenants in possession". Some persons who qualify as tenants under the Act will not be in possession of the rental unit and will, therefore, not be subject to an order under s. 86 [subsequently s.87 of the RTA].

...

[18] Not every dispute over rent arrears can be resolved by the Tribunal in a speedy, fair and efficient manner. I think the requirement that the tenant be "in possession of the rental unit" at the time of the application reflects a determination that rent arrears disputes can be resolved efficiently and fairly through the Tribunal where the tenant at the time of the application continues to have some connection with the rental unit and, therefore, some relationship with the landlord. Situations where that connection has been severed and the relationship gone are best resolved through the more formal court processes.

[19] [. . .] a "tenant in possession" is a person who was using or occupying the rental unit at the time of the application but does not necessarily indicate that the phrase is limited to users and occupiers.

[20] [. . .] In my view, possession of a rental unit refers to some form of control over that unit as demonstrated by factors such as access to, use of, or occupation of the unit.

[21] There will be cases, although I would not think a great many, where a determination of whether the tenant was "in possession of the rental unit" at the time of the application will raise a difficult issue. In those cases, the Tribunal will have to decide, based on the evidence, whether there is a sufficient connection between the rental unit and the tenant to permit a finding that the tenant was "in possession" of that rental unit.

[22] In this case, there was no connection between Bakker and the rental unit at the time the s. 86 application was commenced. Bakker exercised no control over that unit. He had unequivocally, completely, and permanently vacated the unit more than two years before the application.

[23] I stress that my conclusion that Bakker was not "a tenant in possession" does not determine whether Bakker was liable for the rent arrears under the lease. He may or may not be liable depending on the interpretation of the lease and the relevant provisions in the Act. If the landlord wants to chase Bakker for the rent arrears, it will have to go through the courts. . . .

[Emphasis added.]

5. The decision in Bakker was followed by the Divisional Court in *Kipiniak v. Dubiel*, 2014 ONSC 1344, which confirmed that the Small Claims Court has jurisdiction to consider a claim for rent arrears once the tenant is no longer in possession of the rental unit.
6. This state of affairs changed effective September 1, 2021 as a result of Bill 184. For applications filed on or after September 1, 2021 the Board now has jurisdiction to accept

applications where the tenant has gone out of possession prior to the filing of the application but only where the tenant ceased to be in possession on or after September 1, 2021 (see s. 87(1)(b)).

7. The recent changes resulting from Bill 184 do not apply to the legal issue that arises here as there can be no dispute that the Tenants claim that Mr. Bulut was not in possession on or after September 1, 2021.
8. Based on the submissions of the parties and the principles established in *Bakker*, I do not find that Mr. Bulut was a Tenant in possession, I say this because it is quite evident that the Mr. Bulut was not in control of the unit at the time the application was filed. There has been a significant passage of time since Mr. Bulut resided in the unit and the arrears claimed in this application accrued while Mr. Bulut was out of the unit. Although the Landlord was not on notice that he had vacated, when determining whether a Tenant is in possession is not overly relevant to my determination.

L1 APPLICATION.

9. 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.
10. As of the hearing date, the Tenant was still in possession of the rental unit.
11. The lawful rent is \$1,092.19. It is due on the 1st day of each month.
12. Based on the Monthly rent, the daily rent/compensation is \$35.91. This amount is calculated as follows: \$1,092.19 x 12, divided by 365 days.
13. The Tenant has paid \$2,500.00 to the Landlord since the application was filed.
14. The rent arrears owing to October 31, 2022 are \$21,999.70.
15. The Landlord is entitled to \$20.00 to reimburse the Landlord for administration charges and \$5.00 for bank fees the Landlord incurred as a result of 1 cheque given by or on behalf of the Tenant which was returned NSF.
16. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
17. The Landlord collected a rent deposit of \$1,076.43 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.
18. Interest on the rent deposit, in the amount of \$80.30 is owing to the Tenant for the period from June 7, 2017 to October 24, 2022.

RELIEF FROM EVICTION

19. 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.

20. During the hearing, the Tenants testified that they would like to stay in the unit and proposed a payment plan which was essentially \$1,000.00 per month until the arrears were paid in full (approximately 22 months). The Landlord opposed the plan.
21. The Tenant testified that the arrears formed part due to him contacting covid twice and he was sick for 3 months. However, the Tenant also submitted that he was sending money overseas to his family members.
22. In my analysis of whether the tenancy is still viable, I spent some time in the hearing canvassing the Tenant with respect to his income and general monthly expenses. It was clear based on the Tenant's testimony that he cannot financially support paying the monthly rent and paying back the Landlord the arrears that he owes within a reasonable amount of time.
23. After the Tenant's general expenses have been budgeted, the Tenant is in a deficit of approximately \$677.00, without considering the lengthy payment plan proposed. The Tenant has been prioritizing other expenses like personal loans and sending money to family members over his rent. This is prejudicial to the Landlord.
24. The Tenant testified that his account with Uber Eats was activated a day prior to the hearing and he anticipated working with them to earn extra money. I must consider the evidence before me at the time of the hearing, and at the time of the hearing the Tenant had not yet started working for the service, and so any increase in income were not grounded by real numbers, rather are speculative.
25. In considering delaying the eviction, although the Tenant has not had the benefit of knowing my decision, they essentially have been given time to either pay the arrears they owe or find alternative accommodations. Additionally, the Tenant shall receive additional time due to the inevitable delay of the Landlord enforcing this order. Therefore, no additional time will be granted.
26. This order contains all of the reasons intended to be given, no additional reasons shall issue.

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:**
 - \$24,395.08 if the payment is made on or before December 17, 2022. 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 December 17, 2022 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 December 17, 2022**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$20,823.62. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. 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 \$35.91 per day for the use of the unit starting October 25, 2022 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 December 17, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 18, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 17, 2022, then starting December 18, 2022, 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 December 18, 2022.

December 6, 2022
Date Issued

Curtis Begg
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 June 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.

*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

**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 December 17, 2022

Rent Owing To December 31, 2022	\$26,684.08
Application Filing Fee	\$186.00
NSF Charges	\$25.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,500.00
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	- \$
Total the Tenant must pay to continue the tenancy	\$24,395.08

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

Rent Owing To Hearing Date	\$24,269.35
Application Filing Fee	\$186.00
NSF Charges	\$25.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,500.00
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	- \$1,076.43
Less the amount of the interest on the last month's rent deposit	- \$80.30
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	- \$
Total amount owing to the Landlord	\$20,823.62
Plus daily compensation owing for each day of occupation starting October 25, 2022	\$35.91 (per day)

