



## **Order under Section 69 Residential Tenancies Act, 2006**

**Citation:** bclMC Realty Corporation c/o QuadReal Residential Properties G.P. Inc v Dunkley,  
2022 ONLTB 12401

**Date:** 2022-11-29

**File Number:** LTB-L-022723-22

**In the matter of:** 209, 3620 KANEFF CRES  
MISSISSAUGA ON L5A3X1

**Between:** bclMC Realty Corporation c/o QuadReal Landlord  
Residential Properties G.P. Inc

**And**

Samuel Dunkley Tenant

bclMC Realty Corporation c/o QuadReal Residential Properties G.P. Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Samuel Dunkley (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 9, 2022.

The Landlord's Agents Ritzelle Marcelino and Edna Valenzuela and the Landlord's Legal Representative Faith McGregor and the Occupant Patricia Brown attended the hearing. The Tenant, Samuel Dunkley, did not attend the hearing.

As of 4:15 p.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. Since the Tenant did not attend and the Landlord was prepared to proceed, the matter proceeded by way of an uncontested hearing pursuant to section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990.

### **Determinations:**

#### Preliminary Issue

1. The Occupant, Patricia Brown attended the hearing and claimed to be a tenant in the rental agreement and intended to represent herself. The Landlord disagreed that the Occupant was a tenant.
2. The Occupant claimed she attended "the office" along with the Tenant when the rental agreement was signed and it was her belief that she was listed as a tenant. The Occupant also claimed that the Tenant is her cousin and signed the lease and gave her permission to live in the rental until. The Occupant further claimed she had spoken with the Landlord about being added to the rental agreement as a tenant but forgot to follow up. I found

these varying versions inconsistent with one another and I did not find the Occupant's claims to be reliable.

3. The lease agreement submitted by the Landlord is between the Landlord and the Tenant Samuel Dunkley. Patricia Brown is specifically listed as an Occupant of the rental unit. The one year lease agreement began on January 1, 2020. The Occupant claimed she pays the rent to the Landlord and has since 2019, notwithstanding the tenancy did not begin until 2020.
4. The Occupant claimed the rent arrears were as a result of her attending a funeral in Jamaica in March 2022 and has since obtained three jobs and is working to pay down the arrears.
5. The Occupant also claimed she was not aware of the differences between a tenant and an occupant.
6. After hearing from the Occupant, I was not satisfied on a balance of probabilities she is a tenant in this rental agreement. Her claims were inconsistent and I did not find them reliable. Further, the Tenant was not present to give any evidence in support of altering the rental agreement he entered into with the Landlord. In that agreement, Patricia Brown is specifically contemplated and listed as an Occupant. I did not find there was any convincing evidence to interfere with the agreement made between the Landlord and the Tenant.

#### L1 Application

7. At the hearing the Landlord's Legal Representative relied on oral submissions and referred to documents to support their application.
8. 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.
9. As of the hearing date, the Landlord submitted the Tenant was still in possession of the rental unit. They had not received any Notice from the Tenant that he has vacated nor have they have had any keys returned to them.
10. The lawful rent is \$2,317.48. It is due on the 1st day of each month.
11. Based on the Monthly rent, the daily rent/compensation is \$76.19. This amount is calculated as follows:  $\$2,317.48 \times 12$ , divided by 365 days.
12. The Tenant has paid \$16,214.90 to the Landlord since the application was filed.
13. The rent arrears owing to November 30, 2022 are \$4,642.42.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The Landlord collected a rent deposit of \$2,290.00 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.

16. Interest on the rent deposit, in the amount of \$23.57 is owing to the Tenant for the period from January 1, 2022 to November 9, 2022.
17. I asked the Landlord if they had had any contact with the Tenant in an effort to come to a repayment agreement for the outstanding rental arrears. The Landlord submitted that discussions were had with the Occupant Patricia Brown as she was the one that had been working with the Landlord. The Landlord advised the Occupant they would be open to a repayment agreement. The Landlord submitted an email was sent to the Tenant on February 8, 2022 advising him they had not received the monthly rent for February 2022 and that it had been due on the first of the month. The Landlord further submitted they had conversation with the Occupant advising of their online service the Tenant can use to arrange for payment. The Landlord submitted these conversations were had so that the information could be conveyed to the Tenant.
18. Section 83(6) of the Act reads as follows:

Without restricting the generality of subsections (1) and (2), if a hearing is held in respect of an application under section 69 for an order evicting a tenant based on arrears of rent arising in whole or in part during the period beginning on March 17, 2020 and ending on the prescribed date, in determining whether to exercise its powers under subsection (1) the Board shall consider whether the landlord has attempted to negotiate an agreement with the tenant including terms of payment for the tenant's arrears.

19. The Landlord's communication with the Tenant amounts to the sending of one email in February 2022, well before this application was even filed. The purpose of the email was a reminder of when the monthly rent is due and to advise the Tenant the rent for February 2022 had not been paid. It includes a rent ledger and asks for an update on when the monthly rent will be paid. It does not offer a repayment agreement to the Tenant or invite discussions on reaching such an agreement. Further, some seven months passed between this email being sent and the hearing date, making it stale and of little value when considering section 83(6) of the Act.
20. I do not find a landlord is precluded from having discussions with an occupant in relation to issues in a tenancy. Indeed, I find it would be quite typical that discussions between landlord's and occupants occur and could very well form supplementary examples of a landlord's efforts to reach a repayment agreement with a tenant. However, in my view, in order to comply with section 83(6) of the Act, a landlord must make at least one relevant, direct attempt at contacting the Tenant, especially when they have their contact information. The Landlord gave no explanation why they did not include the Tenant in the communications about rental arrears after the application was filed.
21. The Act does not direct me to consider whether the Landlord has attempted to negotiate an agreement with the Occupant but rather whether this was done with the Tenant. In this case, I do not find one email to the Tenant, more than two months before the application was filed, amounts to an attempt contemplated by section 83(6) of the Act. As such, I find it would be fair and reasonable to provide the Tenant additional time to satisfy the rental arrears.

22. The Tenant has also paid a significant amount towards the arrears since the application was filed. Notwithstanding the Tenant did not attend the hearing, I can infer from the payments made they have an interest in maintaining this tenancy which is approaching three years in tenure. Further, the Tenant did not attend because they were at work so I can infer they have an income and are capable of making payments to the Landlord.
23. I did ask the Landlord if they were aware of any issues the Tenant may be experiencing that would make eviction unfair and they were aware of none. The Landlord sought eviction within 11 days of this order.
24. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until January 15, 2023 pursuant to subsection 83(1)(b) of the Act. I am also mindful that the upcoming holiday season can make relocation more difficult that it otherwise should be in the event the Tenant does not void this order.

**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:**
  - \$4,828.42 if the payment is made on or before November 30, 2022. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$7,145.90 if the payment is made on or before December 31, 2022. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$9,463.38 if the payment is made on or before January 15, 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 January 15, 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 January 15, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$883.08. 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 \$76.19 per day for the use of the unit starting November 10, 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 10, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 11, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before January 15, 2023, then starting January 16, 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 January 16, 2023.

**November 29, 2022**  
**Date Issued**

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John Cashmore  
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 July 16, 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 November 30, 2022**

Rent Owing To November 30, 2022	\$20,857.32
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$16,214.90
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$4,828.42</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 31, 2022**

Rent Owing To December 31, 2022	\$23,174.80
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$16,214.90
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$7,145.90</b>

**C. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before January 15, 2023**

Rent Owing To January 31, 2023	\$25,492.28
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$16,214.90
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$9,463.38</b>

**D. Amount the Tenant must pay if the tenancy is terminated**

Rent Owing To Hearing Date	\$19,225.55
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$16,214.90
<b>Less</b> the amount of the last month's rent deposit	- \$2,290.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$23.57
<b>Total amount owing to the Landlord</b>	<b>\$883.08</b>
Plus daily compensation owing for each day of occupation starting November 10, 2022	\$76.19 (per day)