



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

Citation: 1213763 Ontario Inc v Kakkali, 2022 ONLTB 13043

Date: 2022-11-28

File Number: LTB-L-020262-22

In the matter of: 101, 66 PACIFIC AVE
TORONTO ON M6P2P4

Between: 1213763 Ontario Inc Landlord

And

Ahmed Rashad Hadi Al Kakkali, Donald Morton Tenants

1213763 Ontario Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Ahmed Rashad Hadi Al Kakkali, and Donald Morton,(the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on October 25, 2022.

The Landlord's Legal Representative, M. Zarnett and the Tenant, D. Morton and A. Al Kakkali attended the hearing.

At the hearing all parties agreed that P. Sadana is not a party to this application and is therefore removed from the style of cause.

Determinations:

Preliminary Issue

1. The Tenants submit that this tenancy is a tenancy in common and therefore the N4 Notice of Termination is invalid as it lists both Tenants on the same notice jointly liable for the rent.
2. A.AK testified that when P.S moved out of the rental unit, he posted an ad on kijiji or a similar site looking for a roommate. D. Morton responded to an ad posted by A.A and moved into the rental unit. A.A asked the Landlord to add D. Morton to the lease and the Landlord did.

3. The A.AK submitted an email that he sent on August 28, 2020 to an agent of the Landlord asking that D. Morton be added to the lease. The Agent of the Landlord replies on August 31, 2020 requesting a form to be filled out approving changes to the lease, and A.AK returns the requested document the same day.
4. A.AK testified that he was responsible for a portion of the rent and D.A was responsible for a portion of the rent. To substantiate this, A.A. submitted an email between himself and the property administrator that he purposes supports his position. The email states: “Hi Ahmed, Just following up on the below. I do see that you paid 50% of your rent. We still have not received the other 50% from your roommate, Donald.”
5. The Landlord submits that this lease is a joint and severable lease, where both parties are liable for the full amount of the rent.
6. I find, based on the evidence before me, on a balance of probabilities that this is a joint and severable lease, not a tenancy in common. The Tenant A.Ak testified that he found the joint tenant, D. Morton through placing an ad and asked the Landlord to add him to the lease. The Landlord did so. I do not find that the email submitted by the Tenant proves that this is a tenancy in common, the employee of the Landlord writes “I do see you paid 50% of your rent.” which I take to mean, half of the total owing. He does not say, I see you paid 100% of your rent and D. Morton has not paid his share. I do not find that this email supports the Tenant’s position that this is a tenancy in common.

L1 Application

7. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenants 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.
8. As of the hearing date, the Tenants were still in possession of the rental unit.
9. The lawful rent is \$2,088.76. It is due on the 1st day of each month.
10. Based on the Monthly rent, the daily rent/compensation is \$68.67. This amount is calculated as follows: \$2,088.76 x 12, divided by 365 days.
11. The Tenant has paid \$4,834.14 to the Landlord since the application was filed.
12. The rent arrears owing to October 31, 2022 are \$15,915.05.
13. The Landlord is entitled to \$80.00 to reimburse the Landlord for administration charges and \$0.00 for bank fees the Landlord incurred as a result of 4 cheques given by or on behalf of the Tenant which were returned NSF.
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 \$2,109.40 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 \$20.67 is owing to the Tenant for the period from January 1, 2022 to October 25, 2022.

Relief from eviction

17. A.AK testified that he has given the Landlord's notice to vacate effective November 30, 2022, and will be leaving the unit on that date.
18. D.M. testified that he has a child that stays with him at the unit on the weekends. He testified he has lived in the unit since August 2020. The difficulties with the rent started when his Covid -19 benefits ended and not bringing in enough money delivering for Uber Eats. He testified that he started a new job approximately 2 months before the hearing.
19. The Tenant is proposing to a plan that would see the arrears paid off in approximately 19 months.
20. The Landlord is seeking an order terminating the tenancy as of November 30, 2022.
21. I do not find, in these circumstances that the payment plan the Tenant is requesting is reasonable. The payment plan suggested by the Tenant is quite lengthy. The Tenant testified that he hasn't made a payment towards the rent in over a year, even though he was working for Uber Eats and bringing in some income. I do not find it reasonable to grant a payment plan of this length when the Tenant clearly was not prioritizing rent payments for at least a year.
22. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. I find that there has been sufficient delay between the issuing of this order and the hearing date, and no further delay shall be granted.

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:
 - \$22,422.27 if the payment is made on or before January 27, 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 27, 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 27, 2023
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$13,653.91. 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 \$68.67 per day for the use of the unit starting October 26, 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 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.
8. If the unit is not vacated on or before January 27, 2023, then starting January 28, 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 28, 2023.

January 16, 2023

Date Issued

Emily Robb

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 28, 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 January 27, 2023

Rent Owing To January 31, 2023	\$26,990.41
Application Filing Fee	\$186.00
NSF Charges	\$80.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,834.14
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 must pay to continue the tenancy	\$22,422.27

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

Rent Owing To Hearing Date	\$20,352.12
Application Filing Fee	\$186.00
NSF Charges	\$80.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,834.14
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	- \$2,109.40
Less the amount of the interest on the last month's rent deposit	- \$20.67
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	\$13,653.91
Plus daily compensation owing for each day of occupation starting October 26, 2022	\$68.67 (per day)