



**Order under Section 62 / 64 / 66 / 69
Residential Tenancies Act, 2006**

Citation: Tsombanakis v Banfield, 2022 ONLTB 11481

Date: 2022-11-10

File Number: LTB-L-015738-22

LTB-L-009544-22

LTB-L-036749-22

In the matter of: 1704A EGLINTON AVE W
TORONTO ON M6E2H5

Between: Christina Tsombanakis Landlords
Elizabeth Tsombanakis

And

Dwayne Banfield Tenants
Kanista McAfee
Travis Banfield

Christina Tsombanakis and Elizabeth Tsombanakis (the 'Landlords') applied for an order to terminate the tenancy and evict Dwayne Banfield, Kanista McAfee, and Travis Banfield (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe (L1 Application).

The Landlords also applied for an order to terminate the tenancy and evict the Tenants because the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlords or another tenant, the Tenants, another occupant of the rental unit or a person the Tenants permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex, and the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully caused undue damage to the premises (L2 Application).

The Landlords also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on October 24, 2022.

The Landlords, the Landlords' Agent, Mary Tsombanakis (MT), and the Tenant, Dwayne Banfield (DB), attended the hearing. The Tenant declined the opportunity to speak to Tenant Duty Counsel prior to the hearing. The Tenant confirmed that he had the authority to speak on behalf of the other Tenants.

Determinations:

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated on November 21, 2022.

L1 Application

2. The Landlords served the Tenants with a valid Notice to End Tenancy Early for Non-payment 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.
3. As of the hearing date, the Tenants were still in possession of the rental unit.
4. The lawful rent is \$2,050.00. It is due on the 18th day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$67.40. This amount is calculated as follows: \$2,050.00 x 12, divided by 365 days.
6. The Tenants have not made any payments since the application was filed.
7. The rent arrears owing to November 17, 2022 are \$26,650.00.
8. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs
9. The Landlord collected a rent deposit of \$2,050.00 from the Tenants 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.
10. Interest on the rent deposit, in the amount of \$70.17 is owing to the Tenant for the period from October 18, 2019 to October 24, 2022.
11. The Landlord also filed an L1 application bearing file number LTB-L-009544-22. As this is a duplicate application for arrears of rent, it will be dismissed.

Landlords' evidence

12. MB submitted that the relationship between the Landlords and the Tenants has been strained for quite some time. She submitted that numerous attempts have been made to collect the rent however the Tenants have been hostile and have refused to pay any rent for the last twenty-six months.

Tenant's evidence

13. DB did not dispute the amount of rent arrears owed. He testified that the Tenant, Travis Banfield, moved out of the rental unit in December 2021 and that his mother, Kanista McAfee, was not able to attend the hearing because she is currently in the hospital having surgery. He testified that he has been unable to pay the monthly rent because he receives only \$1,500.00 per month from the Ontario Disability Support Program. He testified that his mother works at Mount Sinai Hospital and although he is unaware of her monthly income, she contributes to the monthly rent. The Tenant suggested that he would pay the monthly rent and make additional payments towards the arrears however he was unable to commit to payment plan. The Tenant later testified that his mother actually moved out of the rental unit on June 23, 2022 and was no longer responsible for the monthly rent.
14. Based on the evidence before me, I am satisfied that the Tenants have not paid the monthly rent for the period of September 18, 2020 to November 17, 2022. I say this because DB gave no genuine explanation as to why the monthly rent has not been paid and offered no evidence to support his claim that he can afford the monthly rent.
15. In summary, the evidence was too vague to support DB's claim that he can pay the monthly rent and make additional payments towards the rent arrears. I am not satisfied that the tenancy is viable based on the DB's monthly income and the evidence that his mother will contribute to the monthly rent although she allegedly no longer lives in the rental unit. As such, a standard order will issue terminating the tenancy unless the full arrears are paid within eleven days.

L2 Application

Landlords' evidence

16. MT testified the rental unit is located above a commercial property. She testified that on June 23, 2022 it was brought to her attention by the commercial tenant that the Tenants had vacated the property as they had witnessed a moving truck at the rental unit. She testified that she attended at the unit and found the furniture had been removed. She testified that she saw a structure built above the master bedroom which she concluded was another room. She testified that at no time did the Landlord permit the Tenants to alter the bedroom nor were any permits taken out to build another room.
17. MT testified she was concerned that the structure built by the Tenants would cause serious issues with the integrity of the building and was a safety concern to the other tenants in the complex.
18. MT testified that she returned to the rental unit the next day, June 24, 2022, to inspect the property. She stated that upon her arrival, she heard music coming from the unit and when she unlocked the door and was met by DB who aggressively body slammed her in an attempt to get her out of the unit. MT testified that she has been unable to access the unit as the Tenants have continuously denied her entry to the unit.

19. MT testified that she has received numerous complaints from the commercial tenant with respect to the Tenants blocking access their fire exit and blocking the fire escape.
20. MT submitted a series of photographs as evidence. These photos showed the following:
- a) A second storey structure built in the master bedroom
 - b) Cracks in the ceiling of the commercial unit
 - c) Water stains on the ceiling of the commercial unit
 - d) The fire escape blocking with debris
 - e) The commercial unit's emergency exit blocked with debris including a large television screen, children's strollers, and children's toys
 - f) Various items in the alley behind the complex blocking access to parking spaces.

Tenant's evidence

21. DB testified that his mother moved out of the rental unit on June 23, 2022 however he remained in the unit. He testified he was taken by surprise when MT tried to enter his unit and acted appropriately. He testified that he did not body slam MT when she opened the door.
22. DB testified that he did build a structure in the bedroom, without the Landlord's permission, for the purpose of storage. He testified that in July 2022 he removed the structure. The Tenant did not offer any evidence to show the structure has been removed.
23. DB testified that the items in the alley outside the rental unit do belong to him, but they are no longer blocking access as he moved them to the other side of the alley.
24. Based on the evidence before me I find the Tenants have substantially interfered with the Landlords' lawful rights, privileges, and interests. I also find the Tenants have wilfully caused damage to the rental unit and seriously impaired the safety of another person. I say this because the Tenants built an unauthorized structure above the master bedroom in the rental unit which caused significant damage to the commercial unit below. The Tenants also blocked the fire and emergency exits of the rental unit and the commercial unit which had the potential to cause serious safety issues in the event of a fire in either unit.
25. On a balance of probabilities, I find the testimony of MT to be more credible than DB's. DB's vague and contradictory testimony regarding the rent arrears and whether his mother does or does not live in the rental unit undermines his overall credibility of his testimony in this proceeding.

Section 83 considerations

26. Section 83 of the *Residential Tenancies Act, 2006* (the 'Act') states that the Board must consider all the circumstances and determine whether or not it would be unfair to postpone or refuse eviction.
27. The Landlords are seeking termination of the tenancy because of the rent arrears and the conduct of the Tenants. They are concerned for the safety of the other residents and the

commercial tenants due to the Tenants' actions of building an unauthorized structure in the rental unit and the blocking of emergency exits.

28. DB requested that he be afforded thirty days to vacate the rental unit. He stated that he is the sole caregiver for his three year old son however he did not disclose any other circumstances for me to consider delaying or denying eviction.

29. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1st L1 Application:

1. The application bearing file number LTB-L-009544-22 is dismissed as it is a duplicate application.

2nd L1 Application:

2. The tenancy between the Landlords and the Tenants is terminated unless the Tenant voids this order.

3. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**

- \$26,836.00 if the payment is made on or before November 17, 2022. See Schedule 1 for the calculation of the amount owing.

OR

- \$28,886.00 if the payment is made on or before November 21, 2022. See Schedule 1 for the calculation of the amount owing.

4. 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 November 21, 2022 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.

5. **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 November 21, 2022.**

6. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$23,070.23. 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.

7. The Tenant shall also pay the Landlord compensation of \$67.40 per day for the use of the unit starting October 25, 2022 until the date the Tenant moves out of the unit.
8. If the Tenant does not pay the Landlord the full amount owing on or before November 21, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 22, 2022 at 4.00% annually on the balance outstanding.
9. If the unit is not vacated on or before November 21, 2022, then starting November 22, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 November 22, 2022.

L2 application:

- 11. Notwithstanding paragraphs 2 and 3 immediately above, the tenancy between the Landlords and the Tenants is terminated pursuant to the L2 application. This means that the Tenants must move out of the rental unit on or before November 21, 2022.**
12. If the unit is not vacated on or before November 21, 2022, then starting November 22, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
13. 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 November 22, 2022.

November 10, 2022
Date Issued

Susan Priest
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 May 22, 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before November 17, 2022

Rent Owing to November 17, 2022	\$26,650.00
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
Total the Tenants must pay to continue the tenancy	\$26,836.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before November 21, 2022

Rent Owing to December 17, 2022	\$28,700.00
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
Total the Tenant must pay to continue the tenancy	\$28,886.00

C. Amount the Tenants must pay if the tenancy is terminated

Rent Owing to Hearing Date	\$25,004.40
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	- \$2,050.00
Less the amount of the interest on the last month's rent deposit	- \$70.17
Total amount owing to the Landlord	\$23,070.23
Plus daily compensation owing for each day of occupation starting October 25, 2022	\$67.40 (per day)

2022 ONL TB 11481 (CanLII)