



Order under Section 69 Residential Tenancies Act, 2006

Citation: Ambalia v Obermeyer, 2022 ONLTB 10693

Date: 2022-11-02

File Number: LTB-L-009547-22

In the matter of: Upper Unit, 26 MCLACHLAN PL
BRAMPTON ON N1H8K4

Between: Shubham Ambalia Landlord

And

Alyssa Burns, Chris Obermeyer, Curstin Misener, Kimberly Wettlaufer Tenants

Shubham Ambalia (the 'Landlord') applied for an order to terminate the tenancy and evict Alyssa Burns, Chris Obermeyer, Curstin Misener, and Kimberly Wettlaufer (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

This application was heard by videoconference on August 18, 2022 and October 7, 2022.

The Landlord, the Landlord's Legal Representative, Shalina Puri, and the Tenants Alyssa Burns, Chris Obermeyer, and Kimberly Wettlaufer attended the hearing.

The Tenants that attended advised that they were not present on Curstin Misener's behalf.

Determinations:

1. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$3,250.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$106.85. This amount is calculated as follows: \$3,250.00 x 12, divided by 365 days.
5. The Tenant has paid \$3,200.00 to the Landlord since the application was filed.
6. The rent arrears owing to October 31, 2022 are \$32,152.92, including the \$186.00 application filing fee that the Landlord incurred.
7. There is no last month's rent deposit.

8. The issue at play here is whether the tenancy is a joint tenancy, as defined by the lease signed by the Tenants, or was it changed to a to a co-tenancy based on the pattern of activity, specifically each Tenant being allocated a different rent amount and the discussion that took place between the Landlord and Tenant when three of the Tenants, Curstin Misener (CM), Kimberly Wettlaufer (KW), and Alyssa Burns (AB), vacated.
9. CM vacated November 3, 2021. KW and AB vacated in December 2021,
10. The matter was adjourned from the August 18, 2022 hearing date for the parties to be prepared to answer the following:
- a) What, if any, discussions transpired between the Landlord and Tenant when AB and KW vacated, and when did AB and KW vacate.
 - b) What, if any, discussion took place between the Landlord and Tenant when CM vacated, and when did CM vacate.
 - c) What amount was each Tenant allocated as rent for their respective room, and how were these amounts determined.
 - d) How the rent was paid to the Landlord, for example each Tenant their own amount or paid together.

Tenants' testimony

11. AB testified that that when she needed out of the lease, there were two phone calls with the Landlord. The first call was a group call with all Tenants with respect to what was going to happen; it did not go well, and the call was ended. The second call was AB and the Landlord; the Landlord said once she left to let him know. AB did this, and the Landlord did an inspection.
12. AB also testified that each Tenant paid a different amount; Chris Obermeyer (CO) pays \$400.00, AB paid \$1,850.00, KW paid \$400.00, and CM paid \$600.00. the Landlord knew everyone was paying a different amount, and the Landlord confirmed with CO's worker the amount he would be paying. AB would pay the Landlord \$2,850.00 of the rent, hers, Kw and CM's amount, and CO paid the Landlord directly. Sometimes the money was not sent at once, it depended on when she got the money from KW and CM. AB and AM split the utilities because KW and CO had less income. AB had a discussion with the Landlord as to who was paying what.
13. In cross examination AB testified that she had no discussion with the Landlord about what would happen if CO did not also vacate.
14. KW testified that she paid AB her portion of the rent to give to the Landlord. KW believed when they signed the lease that they were all together but that everyone would have their own room. KW and AB spoke to the Landlord with respect to the problems CM was causing and they had to leave because of them. KW is AB's grandmother and also lived with AB prior to this unit; in the other unit she also paid \$400.00 and transferred the money to AB to pay the rent.

15. CO testified that he is on Ontario Works (OW); OW pays the month rent deposit to the Landlord directly. CO confirmed the Landlord spoke directly to his worker about the amount he would be paying.
16. CO also testified that he understands the rent is \$3,250.00, but thought he was only responsible for his own portion because he cannot afford any more. CO submits that the tenancy should be considered a tenancy-in-common even though they all signed the lease separately. If he has to leave, then needs more than 11 days because he is on OW and has two children; he cannot be homeless.

Landlord's testimony

17. The Landlord testified that Tenants moved in May 28, 2021. The Landlord met with AB and KW, he told them what the rent was and that the Tenants were required to upkeep the lawn. AB advised that she would be sending the money for AB, KW and CM's portions of the rent. The Landlord did speak to CO's caseworker and was told that \$400.00 per month would be coming direct from OW. The Tenants rented the whole house, they did not each rent their own room.
18. The Landlord also testified that AB told him about the internal falling out with CM, and that she and KW were moving out. He told them if all move out then he will rent the house to others; he wanted the house vacant so he could re-rent it. CO had told the Landlord that he would also be moving, but then he changed his mind. The Board was the last resort because of the arrears that were accumulating. The Landlord even offered to have AB and KW back if the arrears at that time were paid off, then they would do a new lease; at this time CM had already vacated.
19. The Landlord further testified that he is an Engineering student at the University of Ottawa. He bought the home to rent it out; the mortgage is approximately \$2,700.00 per month which he has had to carry since the bulk of the rent stopped being paid. He needs eviction so he can re-rent out the home. The Tenants are responsible for the rent because it is a joint tenancy, and he still does not have vacant possession. That the Tenants chose to pay him in the manner they did does not make it a tenancy-in-common, the house was rented as a whole; even KW and CO testified that they were aware the rent was \$3,250.00 but each paid their own portion.

Analysis

20. Here there is no dispute that all four Tenants signed the standard form lease; the lease was for the entire rental unit, and the rent was \$3,250.00. This is the first indicator that the tenancy agreement entered into was a joint tenancy.
21. In a joint tenancy two or more people sign the lease, it is a single lease, and the four unities are required:
- Unity of title: renting the same unit;
 - Unity of time; all tenants must enter into the agreement on the same date;
 - Unity of interest: the signatories are parties to the same agreement; and

- Unit of possession: each tenant takes possession of the undivided whole, they are renting the house/apartment together.

All of the above aspects pertain to this tenancy.

22. Further, in the 'Signatures' section of a standard form lease it says, "Unless otherwise agreed in the additional terms under Section 15, if there is more than one tenant, each tenant is responsible for all tenant obligations under this agreement, including the full amount of rent".
23. Although the Tenants divided up the rent amongst themselves, and decided who was to pay what amount, this is an agreement amongst the Tenants; there was no evidence presented that the Landlord treated the tenancy as a tenancy-in-common. The Landlord's undisputed testimony is that when AB and KW were vacating, he said the entire house had to be vacant so he could rent it out to new Tenants. The Landlord's testimony that CO was also going to vacate but changed hi mind, was also undisputed; therefore, at one point all Tenants were vacating, as they should have for a joint tenancy. If one decided not to vacate, then the Landlord is entitled to the full rent for the rental unit as defined by the lease.
24. Also, AB included in her evidence a statement of the rent paid according to her records. The rent listed in her ledger is shown as the \$3,250.00 and has a column showing what CO paid directly to the Landlord, and a column of what she paid for the remainder of the rent owing. This is exactly how the Landlord understood the full rent was going to be paid; this does not change the terms of the tenancy from a joint to a co tenancy. Booth KW and CO acknowledged they knew what the full rent was, but they were paying a portion of it only.
25. In *Krzyzyczuk v. Bradley* ((21 September 2007), File Nos. EAL-03173 and EAT-00589, Cormier (Ont. L.T.B.)) an implied tenancy-in-common was found based on how the tenancy, specifically rental payments, was handled; the oral and written agreement was accepted by everyone and established the terms of the relationship. Here. Until the Tenants' internal relationship broke down, the full rent amount was being paid as all parties testified to; each Tenant did not have a separate lease or responsibility for their portion, the full rent of \$3,250.00 was due each month.
26. Therefore based on all the above, I find on a balance of probabilities that the tenancy was a joint tenancy as per the standard form lease that was signed by all Tenants, and it remained a joint tenancy. Accordingly, the Tenants are responsible for the full rent as the Landlord did not receive vacant possession.

Relief from Eviction

27. 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 Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. Although CO has been paying his portion of the rent, the arrears have been accumulating at \$2,850.00 per month because the Landlord does not have vacant

possession of the rental unit and cannot re-rent it out until he does. The money owing is excessive, and there is no reasonable expectation that the money can be paid to preserve the tenancy, therefore eviction is necessary to not further prejudice the Landlord.

28. This order contains all the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$35,402.92 if the payment is made on or before November 13, 2022. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants has paid the full amount owing as ordered plus any additional rent that became due after November 13, 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 Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before November 13, 2022**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$29,638.52. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$106.85 per day for the use of the unit starting October 8, 2022 until the date the Tenant moves out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before November 13, 2022, the Tenants will start to owe interest. This will be simple interest calculated from November 14, 2022. at 3.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 13, 2022, then starting November 14, 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 November 14, 2022.

November 2, 2022
Date Issued

 Diane Wade
 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 14, 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 13, 2022

Rent Owing To November 30, 2022	\$38,416.92
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,200.00
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	\$35,402.92

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

Rent Owing To Hearing Date	\$32,652.52
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,200.00
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	- \$
Less the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord	\$29,638.52
Plus daily compensation owing for each day of occupation starting October 8, 2022	\$106.85 (per day)

