



**Order under Subsections 69 and 88(2)
Residential Tenancies Act, 2006**

Citation: Rohan v Miller, 2022 ONLTB 10458

Date: 2022-11-02

File Number: LTB-L-005627-22

In the matter of: 35 JELICOE CRES
BRAMPTON ON L6S3H7

Between: Rohan Scott Landlord

And

Lemuel Miller Tenant

Rohan Scott (the 'Landlord') applied for an order requiring Lemuel Miller (the 'Tenant') to pay the rent that the Tenant owes. The Landlord also applied for an order for compensation for the Tenant's failure to pay utility costs.

This application was heard by videoconference on October 20, 2022. The Landlord, Rohan Scott and the Landlord's spouse Tameka Setalsingh attended the hearing. As of 11:24 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the Board. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

At the hearing, the Landlord submitted that his first and last name were reversed on the L1 application filed with the Board. The Landlord stated his first name is Rohan and his last name is Scott. The N4 notice and the L2 application reflect the Landlord's first name as Rohan and the last name as Scott. I accept the Landlord's testimony and therefore, the L1 application is amended to reflect the Landlord's name as Rohan Scott.

The Landlord's spouse, Tameka Setalsingh ('Ms. Setalsingh') resides with the Landlord and she stated she is also a Landlord at the residential complex. Ms. Setalsingh testified on behalf of the Landlord.

Determinations:

L1 application amended to L9 application

1. The Tenant did not pay the total rent the Tenant was required to pay for the period from October 1, 2021 to March 31, 2022.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Tenant vacated the rental unit on February 19, 2022. As such, the L1 application is amended to an L9 application for rent arrears.

4. The lawful rent is \$2,400.00. It is due on the 1st day of each month.
5. The Tenant has not made any payments since the application was filed.
6. The Landlord collected a rent deposit on June 18, 2021 in the amount of \$2,400.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy is terminated.
7. The Landlord has not paid interest on the last month's rent deposit. Interest on the last month's rent deposit is \$22.65 and represents the period from June 18, 2021 to the termination date of March 31, 2022.
8. The Landlord filed an L1/L9 update sheet prior to the hearing and claims \$10,600.00 for rent arrears for the period of October 1, 2021 to March 31, 2022 plus \$186.00 for the application filing fee.
9. The Landlord stated the Tenant provided no notice to the Landlord prior to the Tenant vacating the rental unit on February 19, 2022 and that the Tenant left the keys to the rental unit in the Landlord's mailbox. The Landlord requests rent arrears up to March 31, 2022 because the Tenant did not provide the Landlord with any notice that the Tenant was terminating the tenancy. The Landlord requested a standard order and stated that the Tenant's non-payment of rent has made it financially difficult for the Landlord as the Landlord has 7 dependant children.
10. If a Tenant does not provide any notice, Subsection 88(1)2 of the *Residential Tenancies Act, 2006* (the 'Act') states:

If the tenant abandoned or vacated the rental unit without giving any notice, arrears of rent are owing for the period that ends on the earliest termination date that could have been specified in a notice of termination had the tenant, on the date that the landlord knew or ought to have known that the tenant had abandoned or vacated the rental unit, given notice of termination in accordance with section 47.

Section 47 of the Act states:

A tenant may terminate a tenancy at the end of a period of the tenancy ... by giving notice of termination to the landlord in accordance with section 44.

Section 44 of the Act states:

A notice under section 47 ... to terminate a monthly tenancy shall be given at least 60 days before the date the termination is specified to be effective and that date shall be on the last day of a rental period.

11. I found the Landlord to be credible and I accept their testimony that the Tenant vacated the rental unit on February 19, 2022 without notice being provided to the Landlord. I find the tenancy was not lawfully terminated in accordance with a notice of termination, an order from the Board or agreement to terminate the tenancy. The Landlord has claimed rent arrears for the period ending March 31, 2022. Therefore, the Tenant's obligation to pay rent ends on March 31, 2022.

12. Subsection 106(10) of the Act requires a landlord to apply a last month's rent deposit to the last month of the tenancy:

106. (10) A landlord shall apply a rent deposit that a tenant has paid to the landlord or to a former landlord in payment of the rent for the last rent period before the tenancy terminates.

13. The last month's rent deposit is therefore applied to the rent for March, 2022.
14. The Landlord collected the deposit on June 18, 2021 and paid no interest on the deposit on it throughout the tenancy. Pursuant to subsection 106(6) of the Act, this interest must be set off against the balance of outstanding arrears and costs.
15. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
16. I find the Tenant owes the Landlord \$8,363.35 which represents the arrears of rent (\$10,600.00) and costs (\$186.00) outstanding for the period ending March 31, 2022 less the last month's rent deposit (\$2,400.00) and the interest owing to the Tenant on the deposit (\$22.65).

L2 application

17. The Landlord filed the L2 application on February 3, 2022 while the Tenant was still living in the rental unit. Section 88.2 of the Act permits a landlord to apply for compensation for a tenant's failure to pay utility costs up to one year after tenant vacates.
18. The Landlord claims an amount of \$644.65 in the L2 application for unpaid utilities by the Tenant. The Landlord stated that the Tenant lived upstairs at the residential complex and the Landlord lived downstairs. The Landlord stated there was a written lease agreement which stipulated the Tenant was to pay 95% of the utility costs and the Landlord was responsible for paying 5% of the utility costs. The Landlord did not produce a copy of the lease agreement for the hearing because the Landlord stated they were unable to locate it. The Landlord stated that the hydro bill was in the Tenant's name and the Landlord paid the gas bill. The Landlord states the water bill is in the Landlord's name.
19. The Landlord stated the Tenant did not pay 95% of the water utility bill dated November 19, 2021 in the amount of \$296.04. The Landlord requests reimbursement from the Tenant in the amount of \$281.24 which represents 95% of this bill amount. The Landlord stated the Tenant also did not pay 95% of the water utility bill dated February 24, 2022 in the amount of \$382.54. The Landlord requests reimbursement from the Tenant in the amount of \$363.41 which represents 95% of this bill amount. The Landlord produced copies of the two water bills from the City of Peel dated November 19, 2021 and February 24, 2022. The water bills note the address for the residential complex and note both the Landlord's name and the Tenant's name. I note the November 19, 2021 water bill notes an amount of \$280.81 which is less than the amount stated by the Landlord. I find this amount to be the correct amount for the November 19, 2021 water bill and 95% of this amount would therefore be \$266.77.

20. The Landlord produced a copy of a text message sent to the Tenant on September 2, 2021 which notes the Tenant is responsible for paying the monthly rent plus 95% of the utilities.
21. On a balance of probabilities and the uncontested evidence of the Landlord, I accept the Tenant was responsible for paying to the Landlord 95% of the utility costs. I found the Landlord's testimony persuasive and credible. Based on the evidence before me, I find the Tenant did not pay the Landlord 95% of the November 19, 2021 water utility bill which equates to \$266.77 and 95% February 24, 2022 water utility bill which equates to \$363.41. Therefore, I find the Tenant owes the Landlord \$630.18 and not \$644.65 as claimed in the L2 application.

It is ordered that:

1. The Tenant shall pay to the Landlord \$8,363.35 which represents the arrears of rent (\$10,600.00) and costs (\$186.00) outstanding for the period ending March 31, 2022 less the last month's rent deposit (\$2,400.00) and the interest owing to the Tenant on the deposit (\$22.65).
2. The Tenant shall pay to the Landlord \$630.18 which represents 95% of the amounts owing for the City of Peel Water Bills dated November 19, 2021 and February 24, 2022.
3. The total amount that the Tenant owes the Landlord is \$8,993.53.
4. If the Tenant does not pay the Landlord the full amount owing on or before November 13, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 14, 2022 at 4.00% annually on the balance outstanding.

November 2, 2022

Parish

Date Issued Kimberly

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.