



Order under Section 69 Residential Tenancies Act, 2006

Citation: bclMC Realty Corporation c/o QuadReal Residential Properties G.P. Inc v Sinclair,
2022 ONLTB 9309

Date: 2022-10-20

File Number: LTB-L-007048-22

In the matter of: 640 SURREY LANE
BURLINGTON ON L7T 3S6

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

And

Carissa Sinclair Tenants
Tatiana Sinclair

bclMC Realty Corporation c/o QuadReal Residential Properties G.P. Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Carissa Sinclair and Tatiana Sinclair (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on August 16, 2022 at 2:16 p.m.

The Landlord's representative Faith McGregor, licensed paralegal, and Ossie Minchella attended the hearing. Mr. Minchella advised that he was representing the Tenants but had no written authorization that could be provided to the Board to verify representation.

The Landlord's representative raised a preliminary matter that Mr. Minchella had no standing at the hearing.

Determinations:

Preliminary Matter: Standing of Mr. Minchella

1. Mr. Minchella attended the hearing and provided evidence that he is a friend of the Tenants and was provided with the opportunity to provide give evidence as to his standing in the hearing and to demonstrate he had authorization to represent the Tenants in the proceeding.

Mr. Minchella's Evidence

2. Mr. Minchella testified that on July 29, 2022 the Tenants were in a car accident, off work and undergoing physiotherapy and were therefore unable to attend the hearing. Further, he acknowledged the Tenants did not request an adjournment.

3. Mr. Minchella testified the Tenants had instructed that he represent them.

Landlord's Evidence

4. The Landlord's representative challenged Mr. Minchella's ability to represent the Tenants at the hearing without written authorization, or other verification of representation.
5. The Landlord's representative testified that she, nor the Board, had received any documentation that would verify Mr. Minchella was authorized to represent the Tenants.
6. The Landlord's presentative further testified she had not received an adjournment request or any information related to the alleged car accident that would impact the Tenants being unable to attend the hearing.

Analysis

7. Despite having the opportunity to provide verification that he was authorized to represent the Tenants at the hearing, Mr. Minchella was unable to provide verification that he was so authorized.
8. Beyond his stated testimony at the hearing, Mr. Minchella did not provide records or evidence related of the alleged events to substantiate his testimony; nor, did Mr. Minchella provide any evidence he had attempted to reach out to the Board, or the Landlord, or the Landlord's representative in advance of the matter.
9. I find that on a balance of probabilities, there was no authorization provided for Mr. Minchella to represent the Tenants at the hearing and therefore Mr. Minchella has no standing in this matter.
10. Since Mr. Minchella had no standing, the Tenants were not present or represented at the hearing although properly served with notice of this hearing by the LTB and there was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

L1 Application

11. The Landlord 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.
12. As of the hearing date, the Tenanst were still in possession of the rental unit.
13. The lawful rent is \$3,230.00. It is due on the 1st day of each month.
14. Based on the Monthly rent, the daily rent/compensation is \$103.89. This amount is calculated as follows: \$3,160.00 x 12, divided by 365 days.
15. The Tenants have made \$12,049.00 in payments since the application was filed.
16. The rent arrears owing to August 31, 2022 are \$15,091.00.

17. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
18. The Landlord collected a rent deposit of \$3,160.00 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.
19. 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.

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:**
 - \$21,737.00 if the payment is made on or before October 31, 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 have paid the full amount owing as ordered plus any additional rent that became due after October 31, 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 Tenant must move out of the rental unit on or before October 31, 2022**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$10,507.11. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$103.89 per day for the use of the unit starting August 17, 2022 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before October 31, 2022, the Tenants will start to owe interest. This will be simple interest calculated from November 1, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before October 31, 2022, then starting November 1, 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 1, 2022.

October 20, 2022
Date Issued

Greg Witt
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 1, 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 October 31, 2022

Rent Owing To October 31, 2022	\$21,551.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$21,737.00

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

Rent Owing To Hearing Date	\$13,523.24
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$3,160.00
Less the amount of the interest on the last month's rent deposit	- \$42.13
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total amount owing to the Landlord	\$10,507.11
Plus daily compensation owing for each day of occupation starting August 17, 2022	\$103.89 (per day)