



JUNE 13, 2024

Landlord and Tenant Board

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

Citation: Malabver v Brown, 2024 ONLTB 42842

Date: 2024-06-13

File Number: LTB-L-007097-24

In the matter of: BASEMENT - 18 GOLD HILL RD
BRAMPTON ON L6X4V2

Between: Marcia Malabver Landlord

And

Oscar Brown Tenant

Marcia Malabver (the 'Landlord') applied for an order to terminate the tenancy and evict Oscar Brown (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on May 28, 2024. The Landlord, Landlord's legal representative Chris Holder, and the Tenant attended the hearing. At the hearing the parties reached a partial consent, and I find it was an informed consent.

Preliminary Issue:

1. The Tenant sought an adjournment as he stated he was unaware of the hearing date and wished to seek legal advice prior to the hearing. Upon hearing the submissions of the parties, I was not satisfied an adjournment was fair or proper. The Tenant admitted to receiving the Notice of Hearing on January 29, 2024 but could not explain why he did not seek legal advice prior to the hearing. Furthermore, the arrears in the application are substantial. As a result, the adjournment request was denied, and the hearing proceeded.

Determinations:

2. The Landlord served the Tenant with a 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.
3. Upon review of the N4 Notice I determined that it was defective. The N4 Notice contains the monthly rental period May 15, 2023 to October 15, 2023. The amount of rent charged for this period was \$12,800.00. The monthly rent is \$1,600.00, therefore either the rental periods are incorrect or the rent charged was incorrect. The Landlord's representative acknowledged the error and wished to proceed with the hearing for arrears only.
4. As of the hearing date, the Tenant was still in possession of the rental unit.
5. The lawful rent is \$1,600.00. It is due on the 15th day of each month.

6. Based on the Monthly rent, the daily rent/compensation is \$52.60. This amount is calculated as follows: $\$1,600.00 \times 12$, divided by 365 days.
7. The Tenant has not made any payments since the application was filed.
8. The rent arrears owing to June 14, 2024 are \$14,400.00.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. There is no last month's rent deposit.
11. The Tenant submitted that he made payments to the Landlord every month since residing in the rental unit. When asked to provide evidence of his payments, the Tenant submitted that he was unable to access his bank account as the account is now closed.
12. The Landlord denied receiving any rent for the periods contained in the L1 application.
13. On a balance of probabilities, I find that the Tenant owes the Landlord \$14,400.00 for rent arrears as claimed in the L1 application. The Tenant was aware of the hearing and had ample time to produce bank records showing payments made to the Landlord. Despite this, the Tenant could not produce any records to show his payments. Without documentary evidence to support his position, I find that the payments were not made to the Landlord.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated on August 15, 2024. This was agreed upon by the parties and is the basis for the partial consent.
2. If the unit is not vacated on or before August 15, 2024, then starting August 16, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. 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 August 16, 2024.
4. The Tenant shall pay to the Landlord \$14,586.00 for arrears of rent up to June 14, 2024 and costs.
5. If the Tenant does not pay the Landlord the full amount owing on or before August 15, 2024, the Tenant will start to owe interest. This will be simple interest calculated from August 16, 2024 at 7.00% annually on the balance outstanding.

June 13, 2024
Date Issued

Brett Lockwood
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 February 16, 2025 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.