



Oct. 13, 2023

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

Citation: SILLS v KHAN, 2023 ONLTB 67946

Date: 2023-10-13

File Number: LTB-L-074650-22 / LTB-T-074714-22

In the matter of: 401, 7 MICHAEL POWER PLACE
ETOBICOKE ON M9A 0A4

Between: RYAN SILLS and HORLICK LEVITT DI LELLA Landlord

And

MOHAMMAD BAQIR KHAN Tenant

RYAN SILLS and HORLICK LEVITT DI LELLA (the 'Landlord') applied for an order to terminate the tenancy and evict MOHAMMAD BAQIR KHAN (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (LTB-L-074650-22).

MOHAMMAD KHAN (the 'Tenant') applied for an order determining that RYAN SILLS (the 'Landlord'):

- entered the rental unit illegally.
- altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys.
- withheld or interfered with their vital services or care services and meals in a care home (LTB-T-074714-22).

Both applications were heard by videoconference on June 5, 2023 and October 5, 2023. Only the Landlord and the Landlord's Legal Representative, C. Salgado, attended the hearing on the latter date.

As of 1:45 p.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the Board.

Preliminary Issues:

The Tenant, on request, was granted an opportunity to participate in the proceedings from one of the Board's Public Access Terminals in Toronto. Although the Notice of Hearing and instructions on how to participate was sent by email to the Tenant on September 17, 2023 he was a no show at the hearing.

On October 11, 2022, an interim order was issued, by a Member who is no longer employed by the Board, finding that the Landlord unlawfully evicted the Tenant but the issue of remedy was left for determination by a different Member.

At the hearing on June 5, 2023, while the Landlord argued that the interim order be set aside, the Tenant asserted that the Board was right to allow another Member to consider remedy.

The Tenant relied on the Divisional Court case, *Faruk v. The Landlord and Tenant Board, 2023 ONSC 2191* in which “*After the Landlord and Tenant Board decided the central issue, but before the final determination of which tenants would benefit from that ruling, the member who had carried the matter resigned from the Landlord and Tenant Board. The Board decided to start again, with a de novo proceeding.*” The court in finding that the Board should not have scheduled a de novo proceeding, granted the applicants’ request for a judicial review of the Board’s decision.

I rejected the Tenant’s argument because in that case, the Member had determined the specific remedies that the Tenants were entitled to after hearing the entire evidence and only the issue of which Tenants were entitled to the remedy was outstanding. In this case, the Member heard the evidence, reached a conclusion and was in the best position to determine the proper remedy in the circumstance. Without hearing the evidence firsthand, I cannot determine the appropriate remedy the Tenant is entitled to, if any. As a result, the interim order was set aside and the hearing commenced afresh.

At the hearing on June 5, 2023, I heard all the issues raised by the Tenant pursuant to section 82 of the Act, as well as his Application about Tenant Rights. However, as he failed to attend the hearing on October 5, 2023, the Landlord’s evidence in response were not considered and no determinations will be made on those issues.

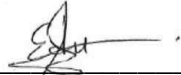
Determinations:

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. 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, 2021. Rent arrears are calculated up to the date the Tenant vacated the unit.
4. The lawful rent was \$2,050.00.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to February 19, 2021 are \$19,780.60.
7. The Landlord incurred costs of \$175.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$2,050.00 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 terminated.
9. Interest on the rent deposit, in the amount of \$45.10 is owing to the Tenant for the period from November 28, 2019 to February 19, 2021.

It is ordered that:

1. The interim order issued by the Board on October 11, 2022, is cancelled, and replaced with this order.
2. The tenancy between the Landlord and the Tenant is terminated as of February 19, 2021, the date the Tenant moved out of the rental unit.
3. The Tenant shall pay to the Landlord \$17,860.50. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
4. If the Tenant does not pay the Landlord the full amount owing on or before October 24, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 25, 2023 at 7.00% annually on the balance outstanding.
5. The Tenant's application is dismissed.

October 13, 2023
Date Issued



Jitewa Edu
Member, Landlord and Tenant Board

15 Grosvenor St, 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay as the tenancy is terminated.

Rent Owing To Move Out Date	\$19,780.60
Application Filing Fee	\$175.00
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	- \$45.10
Total amount owing to the Landlord	\$17,860.50