

Order under Section 192 & 86
Tenant Protection Act, 1997

File Number: TSL-64188-SA



In the matter of: 110, 70 Pleasant Blvd
Toronto ON M4T 1J2

Between: 1212763 Ontario Ltd. Landlord

and

Jeffrey McCaig Tenant

1212763 Ontario Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Jeffrey McCaig (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Tenant did not dispute the matter, and it was resolved with a default order by Member McGavin dated August 17th, 2004 terminating the tenancy.

The Tenant filed a motion to set aside order TSL-64188, issued on August 17, 2004. This motion was heard in Toronto on October 8, 2004. The Landlord and the Tenant attended the hearing. Representing the Landlord was Julian Keller, who acted on their behalf.

After considering the evidence, it is determined that:

1. The Tenant was not reasonably able to participate in the resolution of the Landlord's application to terminate the tenancy and evict the Tenant. The order was set aside. The application was then heard fresh.
2. The Tenant has not paid the total rent the Tenant was required to pay for the period from July 1, 2004 to October 31, 2004. Because of the arrears, the Landlord served a Notice of Termination effective July 28, 2004.
3. The issue of termination is now moot, as the Tenant has moved out. The Landlord is seeking arrears of rent only.

4. The Tenant's notice to vacate and terminate the tenancy was defective, and a nullity. This was examined at the Ontario Divisional Court in *George V Apartments v. Cobb*, in which the Court put a significant onus on Tenants to get it right when giving notice, and also found that improper notice by a Tenant is a nullity, just as short notice by a Landlord with a notice of rent increase is a nullity if served even one day late.
5. The Tenant did not recognize that his lease obligation ran until the end of December 2004, and the *Act* requires that the earliest date of termination in a notice, be the end of a period, or where there is a lease term, the end of the term.
6. *1162994 Ontario v. Bakker* at the Ontario Court of Appeal came into play, as the Court in *Bakker* said that generally, the Tribunal does not have jurisdiction to hear section 86 arrears matters after the Tenant is no longer in possession. My jurisdiction to hear this matter came into question.
7. However, the Court left the door open, saying that if there is a sufficient connection between the Tenant and the unit, that a Tenant might still be in possession even though not in occupation.
8. The Tenant did not notify the Landlord that he was leaving. The Tenant did not return his key. The Tenant did not return his parking key. The Tenant acknowledges he left before the lease term had ended.
9. The Landlord did not find out that the Tenant had left until September 8th, 2004. They made this discovery by accident, and not because the Tenant had notified them.
10. Therefore, I find that there is a sufficient connection between the Tenant and the rental unit, distinguishing this case from *1162994 Ontario v. Bakker* at the Court of Appeal.
11. However, flowing from *Bakker* is the logic that arrears of rent cannot be ordered for a period after that sufficient connection ceases. Therefore, I will only order compensation for rent arrears up to September 8th, 2004.
12. The Landlord collected a rent deposit of \$1,014.00 from the Tenant and this deposit is still being held by the Landlord. Interest is also owing on this rent deposit for the period from January 1, 2004 to July 28, 2004. Both the deposit and the interest will be credited to the Tenant in calculating what he owes.
13. The total owing to the Landlord is \$2028 to the end of August, plus \$266.72 using the per diem rate of \$33.34 per day for the 8 days in September, minus \$1,014 as the rent deposit, minus \$35.01 as interest on the deposit, for a total of **\$1,245.71** plus costs.

It is ordered that:

1. Order TSL-64188, issued on August 17, 2004, is set aside and replaced with the following.

2. The unit has been abandoned. The tenancy between the Landlord and the Tenant is terminated as a result of the abandonment.
3. The Tenant shall pay to the Landlord \$1,245.71, which represents the amount of rent owing up to September 8, 2004, less the rent deposit and interest the Landlord owes on the rent deposit.
4. The Tenant shall also pay to the Landlord \$150.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing on or before October 19, 2004, the Tenant will start to owe interest. This will be simple interest calculated from October 20, 2004 at 4.00% annually on the balance outstanding.

October 8, 2004

Date Issued

Harry Fine

Member, Ontario Rental Housing Tribunal

Toronto South Region
2nd Floor, 79 St. Clair Ave. E
Toronto ON M4T 1M6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.