



Order under Section 69 Residential Tenancies Act, 2006

Citation: Chenoweth v Difede, 2023 ONLTB 30709

Date: 2023-04-19

File Number: LTB-L-048506-22

In the matter of: B, 53 Marlborough Avenue
Toronto ON M5R1X5

Between: Thomas Chenoweth

And

Claudio Difede

I hereby certify this is a
true copy of an Order dated
APR 19, 2023
Landlord and Tenant Board

Landlord

Tenant

Thomas Chenoweth (the 'Landlord') applied for an order to terminate the tenancy and evict Claudio Difede (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 27, 2023.

The Landlord and the Tenant attended the hearing.

Preliminary issues:

1. The Landlord served the Tenant with a Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The N4 Notice was dated and served on August 2, 2022, and identified a termination date of August 15, 2022. This means the N4 Notice was served on the Tenant 13 days before the termination date. Under section 59(1)(b) of the *Residential Tenancies Act, 2006* (the 'Act'), the termination date in a notice of termination of tenancy for non-payment must be at least 14 days after the date the notice is served. The N4 Notice is therefore defective and cannot form the basis of an application to terminate the tenancy and evict the Tenant.
2. I explained my finding that the N4 is defective to the Landlord at the hearing, and he decided to proceed with the hearing to seek an order for arrears of rent only, and not an order terminating the tenancy and evicting the Tenant.
3. The Tenant requested an adjournment because he stated that he intends to raise issues under section 82 of the Act. For a tenant to exercise the right to raise issues under section 82 of the Act at the hearing of a landlord's rent arrears application, under section 82(2) of the Act and rule 19.4 of the Board's *Rules of Procedure*, a tenant must give the landlord and the Board a written description of each issue they intend to raise, and a copy of any evidence they intend to rely on, at least 7 days before the hearing.
4. Where a tenant fails to give the landlord and the Board a written description of each issue they intend to raise at least 7 days before the hearing, then under section 82(1) and (2) of the Act and rule 19.5 of the *Rules of Procedure*, the tenant shall not be permitted to raise

their issues under section 82 of the Act, unless the Board is satisfied that the tenant *could* not comply with that requirement.

5. In this case, the Tenant confirmed that he was provided with the notice of hearing package for this hearing by the Board on February 3, 2023 by email. The notice of hearing includes a link to the relevant form to fill out if the Tenant intended to raise any such issues. It also includes contact information for finding the Tenant's local community legal clinic to obtain legal advice.
6. The Tenant stated that he did not provide the required advance notice of the issues he intended to raise under section 82 because he was given inaccurate information when he phoned the Board. I do not find this to be a satisfactory reason for why the Tenant was not able to comply with the requirement to provide the Landlord and Board with a written description of each issue he intended to raise in advance of the hearing. The Tenant received the notice of hearing more than 7 weeks before the hearing date, and that document included a link to the necessary form together with a statement that the form would need to be completed if any issues are present, as well as information to help the Tenant obtain legal advice.
7. The Landlord would be prejudiced if I were to adjourn the hearing to permit the Tenant to raise issues under section 82 of the Act. This application was filed approximately 7 months ago, and the Landlord claimed in his L1/L9 update sheet that the Tenant has paid only \$600.00 in rent since that time. Any prejudice to the Tenant is minimal, because this decision does not preclude him from pursuing a tenant application if he so chooses.

Determinations:

8. As of the hearing date, the Tenant was still in possession of the rental unit.
9. The lawful rent is \$1,650.00. It is due on the 1st day of each month.
10. The Tenant has paid \$600.00 to the Landlord since the application was filed.
11. The rent arrears owing to March 31, 2023 are \$12,600.00.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The Tenant shall pay the Landlord \$12,786.00 for arrears of rent up to March 31, 2023 and costs.
2. If the Tenant does not pay the Landlord the full amount owing on or before April 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 1, 2023 at 6.00% annually on the balance outstanding.

April 19, 2023

Date Issued

Mark Melchers

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.