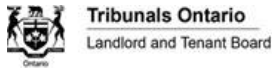


C/O filament realty management v Brunet, 2023 ONLTB 73231 (CanLII)

Date: 2023-12-04
File number: LTB-L-012431-23
Citation: C/O filament realty management v Brunet, 2023 ONLTB 73231 (CanLII),
<<https://canlii.ca/t/k1zlg>>, retrieved on 2024-01-24



Order under Section 69 Residential Tenancies Act, 2006

Citation: C/O filament realty management v Brunet, 2003 ONLTB 73231
Date: 2023-12-

04

File Number: LTB-L-012431-23

In the matter of: 3, 227 WILLIAM ST
HAWKESBURY ON K6A 1X2

Between: Thambiah holdings inc. C/O filament realty Management Landlord

And

Annie Brunet Tenants
Karell Drouin

Thambiah holdings inc. C/o filament realty management (the 'Landlord') applied for an order to terminate the tenancy and evict Annie Brunet and Karell Drouin (the 'Tenants') because the Tenants did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 24, 2023.

The Landlord's Legal Representative Allan Kouri and the Landlord's Agent Gerson Thambiah attended the hearing.

As of 10:09 a.m., the Tenants were not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. The Landlord served the Tenant with a Notice to End Tenancy Early for Non-payment of Rent (N4 Notice).

2. The N4 Notice stated that the arrears or rent owing was calculated as follows:

The following information is from your landlord				
This table is completed by the landlord to show how they calculated the total amount of rent claimed on page 1:				
Rent Period		Rent Charged \$	Rent Paid \$	Rent Owing \$
From: (dd/mm/yyyy)	To: (dd/mm/yyyy)			
01/01/2023	31/01/2023	871.25	0.00	871.25
01/12/2022	31/12/2022	850.00	70.00	780.00
/ /	/ /	.	.	.
Total Rent Owing \$				1,651.25

3. The Landlord submitted a Tenants Statement (ledger) to the Board that reflected the following:

2022-12-01 Rent	850.00	1,760.00
2022-12-02 Payment	-425.00	1,335.00
2022-12-25 Payment	-130.00	1,205.00
2023-01-01 Rent	871.25	2,076.25
2023-01-03 Payment	-425.00	1,651.25
2023-01-05 Payment	-50.00	1,601.25
2023-01-26 Payment	-480.00	1,121.25
2023-01-31 Payment (Check #odsp)	-425.00	696.25

4. The Board asked the Landlord about the payments in the ledger that were not listed in the N4 notice.

5. The Landlord submitted that they had applied the payments to the oldest arrears in accordance with generally accepted accounting principles.

6. The Board questioned that if there are no arrears of rent being claimed for the period prior to December 1, 2022, then should not any payments received after December 1, 2022, be applied to arrears of rent that accrue after that date?

7. The Landlord referred the Board to SWL-50187-21 where the Board had accepted that payments could be applied to oldest arrears. The Landlord submitted that this decision was binding because the facts were the same.

8. On the second submission, the Board disagrees; a decision by a different Member of the Board is not binding on the Board. It would be error of law to accept this submission.

9. The Landlord in their post-hearing submissions submitted that Member Nikitin (the presiding Member in SWL-50187-21) was an "astute and experienced lawyer and adjudicator". These comments infer that the Landlord may be attempting to impugn the credibility of the panel that consists of two experienced lawyers; including an experienced Vice-Chair for some improper purpose.

10. The Board distinguishes SWL-50187-21 on basis that that decision does not address the question posed by the Board at paragraph 6.

11. The ledger submitted by the Landlord shows that at the end of November 2022, there were arrears of rent totalling \$910.00. The Landlord was only seeking an order from the Board for arrears of rent that began to accrue from December 1, 2022. The Board can only presume from the N4 notice that the Landlord had "written off" those arrears as an accounting practice or has otherwise not pursued their claim for those arrears of rent.

12. The instructions issued by the Board on how to complete an N4 notice specifies:

Complete the table on page two to show: the rental periods during which the

tenant did not pay the full rent, the rent charged during these periods,

the amount of rent the tenant paid (if any) during each period, and (emphasis added) the total amount of rent the tenant owes you.

13. The ledger shows that for the period December 1, 2022, to January 31, 2023 (the period for which arrears of rent are claimed) the amount of rent the tenant paid totals \$1,935.00.

14. The Landlord only indicated in the N4 notice payments totalling \$70.00. This shows that some rental payments are not accounted for. In other words, even if the Landlord applied $\$1,935.00 - 70.00 = \$1,865.00$ to the unclaimed arrears that predate December 1, 2022, there remains a significant sum not accounted for: $\$1,865.00 - 910.00$ (arrears as of November 30, 2022) = \$955.00.

15. It would be a generally accepted accounting principle to properly record the date that payments are received. However, the N4 notice is not an accounting ledger. It is a statement from the Landlord setting out how much the Landlord believes that the Tenants owe in arrears of rent and sets out how much the Tenants must pay in order to void the notice.

16. The N4 notice instructions make it clear that the Landlord must include all payments the Tenant paid during each period listed in the table. Failure to list all payments may be construed as being false or misleading.

17. The Landlord was afforded 7 days for post-hearing submissions on this issue.

18. The Landlord appears to take exception that this panel raised this issue at this hearing and not at a prior hearing. There were no findings at the hearing on July 5, 2023. There were no findings at the hearing on September 27, 2023. Therefore, it remained open for this panel to satisfy itself that the Landlord had served a **valid** N4 notice.

19. The Board's Guideline 10 – Procedural Issues Regarding Eviction Applications, states that an eviction cannot proceed unless the Tenant has received a **valid** Notice of Termination:

The Board will not terminate a tenancy and order eviction of the tenant unless the tenant has received a valid Notice of Termination from the landlord and the landlord has successfully proved the ground claimed in the Notice at the hearing of the application.

If the document given to the tenant or the method or time of service are defective, in most cases this will result in dismissal of the application or the denial of the eviction portion of the application.

20. The Landlord submitted that the decision in *Ball v. Metro Capital Property and Lockhurst* (December 19, 2002), Toronto Docket No. 48/02 (Div. Ct.) is binding on the Board. The Board agrees. This decision stands for the premise that a Landlord must provide sufficient reasons for giving a notice, and that a lack of details could render the notice defective. In this instance, the Landlord failed to disclose all of the rent payments received during the relevant periods listed in the N4 Notice. In this instance, if the total rent owed for December 2022 and January 2023 = \$1,721.25 and the Tenant's total rent payments during the same time frame = \$1,935.00, then there should be a credit to the Tenant in the amount of \$213.75, vice any arrears of rent owing.

21. The Landlord referred the Board to *Kuzyk v SK Properties* [2001] O.J. No.5260. That application appears to have been in relation to some "impugned conduct" of the Tenant and the validity of a different Notice of termination (for conduct) other than an N4 Notice for arrears of rent. Therefore, this decision is also distinguishable for that reason from this application for arrears or rent.

22. The Landlord was not seeking an order of the Board for arrears of rent that predate December 1, 2022. The instructions for completing the N4 Notice specify that the Landlord should list the rental periods during which the Tenant did not pay rent. The Tenants ledger appears to show that beginning in March 2022 the Tenants did not pay the full amount of rent owing. However, the Landlord did not seek an order for arrears of rent for the period between March and November 2022.

23. The N4 notice requires that the Landlord indicate the total of all rent payments received during the relevant periods listed in the N4 notice. This is not an accounting principle. The Landlord failed to list \$1,865.00 in rent payments received during this period.

24. The Landlord must clearly state the allegations in the N4 notice; specifically, the period for which arrears of rent are claimed, and the total rent payments received during the same period. The N4 notice stated that the Landlord believed that the Tenant owed \$1,651.25 in rent; and that the Tenant could void the order by paying this amount. The failure to list the total payments means that the amount to be paid to void the order is misleading.

25. The imprecision regarding total rent payments received during the periods listed in the N4 notice, and the amount the Tenant must pay to void the order renders the N4 notice defective. Therefore, the Board finds that the N4 notice is defective.

26. For the reasons listed above the Landlord application is dismissed.

It is ordered that:

December 4, 2023
Date Issued

Victor Keubou
Member, Landlord and Tenant Board

1. The Landlord application is dismissed.

Robert Patchett
Vice Chair, 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.