



Order under Section 16.1 of the
Statutory Powers Procedure Act
and the **Residential Tenancies Act, 2006**

File Number: TET-03929-19-IN2
TET-05664-19-IN2
TEL-14131-20-IN

In the matter of: 24 DON HADDEN CRESCENT
SUNDERLAND ON L0C1H0

Between: Eran Oz Landlords
Jennifer Oz

and

Charles Shearer Tenants
Jenna Shearer

INTERIM ORDER

Eran Oz and Jennifer Oz (the 'Landlords') applied for an order to terminate the tenancy and evict Charles Shearer and Jenna Shearer (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe. (L1 application)

The Tenant applied for an order to determine whether the *Residential Tenancies Act, 2006* (the 'Act') applies. (A1 application)

The Tenant also applied for an order determining that the Landlords or the Landlords' superintendent or the Landlords' agent harassed, obstructed, coerced, threatened or interfered with the Tenant, entered the rental unit illegally and substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household. (T2 application)

The Tenant also applied for an order determining that the Landlords failed to meet the Landlords' maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards. (T6 application)

The following list the dates and locations and which applications were heard during those times:

- A1, T2 and T6 applications - in Whitby on January 10, 2020
- All applications – February 26, 2021 in Board video conference room 47
- All applications - March 1, 2022 in Board video conference room 139
- All applications - March 10, 2022 in Board video conference room 147
- All applications – April 7, 2022 in Board video conference room 131

- All applications – April 21, 2022 in Board video conference room 136
- All applications – June 13, 2022 in Board video conference room 129

Throughout the hearings the first-named Tenant and the first-named Landlord attended the hearings. The second-named Tenant and second-named Landlord attended most of the hearings or allowed their counterparts to present their positions. As of February 26, 2021, the Landlords' representative, Daniel Greanya, attended the hearings as well.

Determinations:

1. At the last hearing, the parties were directed to file with the Board and serve on the other their submissions regarding the issue the Tenants brought forward.
2. The issues to be determined are:
 - Is the N4 issued by the Landlords to the Tenants on December 2, 2020, valid?
 - Does subsection 12(4) apply suspending the Tenants' obligation to pay rent?
3. By way of background, the parties were before the Board on January 6, 2020, for TEL-05362-19 for the Landlord's application for non-payment of rent. The Board issued its order on August 4, 2020, and amended the order on November 9, 2020.
4. the parties were before the Board on November 26, 2020, for file TEL-05362-19-VO. The Tenants had filed a motion to void order TEL-05362-19-AM as they had paid \$33,000.00 into the Board.
5. The Tenants filed their motion to void on November 7, 2020. The parties agreed that the amount owed to the Landlord at the time of the motion was \$31,596.60. This means the Tenants payment into the Board in Trust in the amount of \$33,000.00 was not only sufficient to void order TEL-05362-19-AM but there was an over payment.
6. On December 2, 2020 the Landlord served the Tenants with a new Notice of Termination for Non-payment of Rent ('N4') for the whole monthly rent for December 2020.
7. The Board issued order TEL-05362-19-VO on December 10, 2020, which states the following:
 - The Tenants voided order TEL-05362-19;
 - \$31,596.0 [sic] paid into the Board will be paid out to the Landlord; and
 - The excess of \$1,403.40 will be paid out to the Tenants.
8. There is an additional note under the ordered provisions that says "The Board shall pay to the Landlord the amount of \$33,000.00 together with any accrued interest."

9. Despite this obvious error noted above in paragraph 7, the Board paid out to the Landlord the correct amount of \$31,596.60. The Board also issued a cheque to the Tenants in the correct amount.
10. The Tenants have stated they did not receive this amount. The Board's record shows on June 24, 2021, a Board staff member sent an email and left a voicemail for the Tenants regarding a stale dated cheque. The Tenants contacted the Board stating they did not receive any cheque and gave the staff member a Port Perry address. It is unclear whether this address had been given to the Board prior to this time. The new address is noted in the payment out; however, the Tenants state they still have not received this amount.

Incorrect Amount on N4?

11. The Tenants argue that they were confused about the N4 amount as they had overpaid for file TEL-05362-19-VO and they believed the over payment should have been applied to the month of December, 2020.
12. The Tenants are relying on subsection 195(5) of the *Residential Tenancies Act, 2006* (the 'Act'). The applicable provisions pertaining to this subsection are as follows:

195 (1) Where the Board considers it appropriate to do so, the Board may, subject to the regulations,

(a) require a respondent to pay a specified sum into the Board within a specified time; or

(b) **permit a tenant who is making an application for an order under paragraph 1 of subsection 29 (1)** to pay all or part of the rent for the tenant's rental unit into the Board.

...

(5) Payment by a tenant **under clause (1) (b)** shall be deemed not to constitute a default in the payment of rent due under a tenancy agreement or a default in the tenant's obligations for the purposes of this Act.

13. Subsection 29(1) paragraph one states,

29 (1) A tenant or former tenant of a rental unit may apply to the Board for any of the following orders:

1. An order determining that the landlord has breached an obligation under subsection 20 (1) or section 161.

14. Section 161 of the Act says,

In addition to a landlord's obligations under section 20, a landlord is responsible for,

- (a) removing or disposing of garbage or ensuring the availability of a means for removing or disposing of garbage in the mobile home park at reasonable intervals;
- (b) maintaining mobile home park roads in a good state of repair;
- (c) removing snow from mobile home park roads;
- (d) maintaining the water supply, sewage disposal, fuel, drainage and electrical systems in the mobile home park in a good state of repair;
- (e) maintaining the mobile home park grounds and all buildings, structures, enclosures and equipment intended for the common use of tenants in a good state of repair; and
- (f) repairing damage to a tenant's property, if the damage is caused by the wilful or negligent conduct of the landlord.

[Emphasis added.]

- 15. In this case, the payment into the Board is attached to the Landlord's application regarding non-payment of rent, which is dealt with under section 69 of the Act.
- 16. For the above reason the Tenants' argument relying on subsection 195(5) fails.
- 17. The Tenants further argue that the issuance of the N4 was premature due to the fact that order TEL-05362-19-VO had not yet been received. However, it is clear the parties understood what was required to void order TEL-05362-19-AM.
- 18. Given the evidence before the Board, I find the N4 served on the Tenants on December 2, 2020, to be accurate at the time of service.

Section 12

- 19. The Tenants claim in the alternative that their obligation to pay rent is suspended under section 12 of the Act. They state that they found the Landlord's address through land registry records. They claim the Landlord sold a house and that address is no longer applicable, and the Landlord did not notify the Tenants of a new address.
- 20. The Landlord disagrees claiming an address was given to the Tenants at the commencement of the tenancy. The address the Tenants have sent the documents in the past continues to be the address where the Landlord receives documents.
- 21. Section 12 of the Act reads in part:

(1) Every written tenancy agreement entered into on or after June 17, 1998 shall set out the legal name and address of the landlord to be used **for the purpose of giving notices or other documents under this Act.**

(2) If a tenancy agreement entered into on or after June 17, 1998 is in writing, the landlord shall give a copy of the agreement, signed by the landlord and the tenant, to the tenant within 21 days after the tenant signs it and gives it to the landlord.

(3) If a tenancy agreement entered into on or after June 17, 1998 is not in writing, the landlord shall, within 21 days after the tenancy begins, give to the tenant written notice of the legal name and address of the landlord to be used for giving notices and other documents under this Act.

(4) Until a landlord has complied with subsections (1) and (2), or with subsection (3), as the case may be,

(a) the tenant's obligation to pay rent is suspended; and

(b) the landlord shall not require the tenant to pay rent.

(5) After the landlord has complied with subsections (1) and (2), or with subsection (3), as the case may be, the landlord may require the tenant to pay any rent withheld by the tenant under subsection (4).

[Emphasis added.]

22. The purpose of section 12 of the Act is to ensure that a tenant can send the landlord the rent and serve documents under the Act.

23. I am not persuaded by the Tenants' argument that they did not and do not have the Landlord's address for service.

24. On any application before the Board the person making an allegation bears the burden of proof. This means the Tenants must lead sufficient evidence to establish that it is more likely than not that they did not have the Landlord's address for service, therefore, section 12(4) would apply and their obligation to pay the rent would be suspended.

25. In this case, all of the Tenants' applications, even application TET-03386-19 noted in related applications and was filed prior to the applications this order applies to, has the Landlord's address for service.

26. This also means that I find that the Tenants did have the Landlord's address when the N4 was served on the Tenants on December 2, 2020.

27. As a result, I find the N4 noted the correct amount owed at the time of service. I also find the Tenants were obligated to pay rent as it came due and section 12 does not apply in this situation.

28. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The N4 served on the Tenants by the Landlord on December 2, 2020, is valid and active.
2. A further interim order shall follow regarding the final submissions on these applications.

November 16, 2022
Date Issued



Shelby Whittick
Member, Landlord and Tenant Board

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