

Order under Section 69
Residential Tenancies Act, 2006

File Number: SOL-98633-18

In the matter of: MAIN FLOOR, 79 EAST 14TH STREET
HAMILTON ON L9A4B4

Between: Susan Martin

Landlord

and

Sarah McGillivray

Tenant

I hereby certify this is a
true copy of an Order dated

DEC 12 2018

Landlord and Tenant Board

Susan Martin (the 'Landlord') applied for an order to terminate the tenancy and evict Sarah McGillivray (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard in Hamilton on December 11, 2018.

The Landlord and her husband, Sean Fraser (SF), attended the hearing. The Tenant and her father, David McGillivray (DM) attended the hearing.

Determinations:

1. The parties signed the tenancy agreement on September 11, 2018 with a move-in date of September 15, 2018 for a fixed one-year term until September 14, 2019. The tenancy agreement required the Tenant to pay a monthly rent of \$1,700.00, due and payable on the 15th of every month.
2. Under a separate agreement signed on September 11, 2018, the parties agreed that the Tenant would receive \$100.00 from the Landlord for mowing the lawn and clearing the snow and ice.
3. Paragraph 8 of the tenancy agreement required the Tenant to pay a last month's rent deposit of \$1,600.00 (\$1,700.00 less \$100.00 for mowing the lawn and clearing snow and ice).
4. On September 15, 2018, the Tenant offered to pay the Landlord \$1,700.00 in cash. The Landlord did not accept the Tenant's \$1,700.00 because the funds only covered the first month's rent. The Landlord did not give the Tenant the keys to the unit because the Tenant did not have the last month's rent deposit. The Landlord told the Tenant they would re-list the house for rent. When the Tenant "begged and begged", the Landlord resiled and gave the Tenant more time to come up with both first and last months' rent.

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5. On September 22, 2018, the Tenant paid \$3,200.00 covering both first and last months' rent. At this time, the Landlord gave the Tenant the keys.
6. The Tenant moved in on October 1, 2018.
7. While the tenancy agreement provided that the tenancy commenced on September 15, 2018, based on the Landlord's refusal to provide the keys to the Tenant on September 15, 2018, I find that the tenancy commenced on September 22, 2018. I disregard the term of the agreement and make this finding based on Section 202 of the *Residential Tenancies Act, 2006* (the "Act") which mandates the Board to ascertain the real substance of all transaction and activities relating to a rental unit. Section 202 authorizes the Board to disregard the outward form of a transaction and to have regard to the pattern of activities relating to the rental unit.
8. Given the Tenant's actual move-in date of October 1, 2018, I find that the rental period is from the first (1st) day to the last day of each month. The Landlord is however entitled to compensation for the Tenant's use of (or ability to use) the rental unit from September 22, 2018 to September 30, 2018. At the hearing, the parties agreed that the daily compensation shall be determined based on \$1,600.00 per month.
9. In any event, the notice of termination for non-payment of rent (N4) which the Landlord served on the Tenant, in so far as it specified a rental period from the 15th of October 2018 to the 14th of November 2018, is inaccurate.
10. Section 43 (2) of the *Residential Tenancies Act, 2006* (the "Act") requires notices of termination from a landlord to include "reasons and details respecting the termination". As with other content requirements, failure to provide accurate or sufficient reasons makes the notice of termination void.
11. As held by the Divisional Court in *Bianchi and Aguanno* [1983] O.J. No. 3053, 42 O.R. (2d) 76, this is more than a technical objection; a notice of termination is a unilateral, non-consensual document which brings a tenancy to an end. If a notice of termination is inaccurate in any respect, the notice of termination cannot be amended.
12. The Board has no jurisdiction to terminate a tenancy based on an invalid N4 notice of termination. The Board however retains the authority to order payment of rent arrears, which the Landlord requested.
13. I find that the Tenant owes the Landlord rent arrears in the amount of \$3,673.42, as follows:

Sept 22 to Sept 30 - \$52.60 x 9 days	= \$473.42
Oct 2018	= \$1,600.00
Nov 2018	= \$1,600.00
Dec 2018	= \$1,600.00
	= \$5,273.42
Less <u>Tenant's Payment</u>	\$1,600.00
	\$3,673.42

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14. I also find that the Tenant owes the Landlord \$175.00 for cost of filing the application. The Tenant claimed that she always had the cash monies to pay the rent but that the Landlord never came to get the payment. In fact, the Tenant had \$3,200.00 cash with her at the hearing. DM testified that he got into a fight with SF in the driveway and there was no further opportunity to talk or offer the cash payment after that. The Landlord testified that they talked to the Tenant in the backyard and the Tenant told them she would have the money and yet never offered them any payments, cash or otherwise.
15. It is the Tenant's obligation to deliver the rent to the Landlord. It was incumbent on the Tenant to approach the Landlord and offer up her cash payments. There is no obligation on the Landlord to knock on the Tenant's door and ask for rent payments. I note too that the tenancy agreement required the Tenant to pay the rent by e-transfer. If the strain in the relationship prevented the Tenant from approaching the Landlord with her cash monies, there was nothing to prevent her from paying the rent by e-transfer.
16. DM asserted that this was not about "not paying the rent", but about "when the rent was due", whether it was due on the 15th or the 1st. DM submitted that it was not reasonable for the Landlord to receive \$3,200.00 (first and last months' rent) on September 22, 2018 and then demand another \$1,600.00 on October 15th. Fair enough. However, the Tenant did not offer to pay rent, not on the 15th of October, but not on November 1st or December 1st either. The Tenant held on to the rent monies, but did not file her own application to straighten out the issues.
17. It took the filing of this application, which cost the Landlord \$175.00, to sort out the issues.
18. I therefore find that the Landlord is entitled to the cost of filing the application.

It is ordered that:

1. The Tenant shall pay to the Landlord \$3,673.42, which represents the amount of rent owing and compensation up to December 31, 2018.
2. The Tenant shall also pay to the Landlord \$175.00 for the cost of filing the application.
3. If the Tenant does not pay the Landlord the full amount owing on or before December 31, 2018, the Tenant will start to owe interest. This will be simple interest calculated from January 1, 2019 at 3.00% annually on the balance outstanding.

December 12, 2018
Date Issued

Southern-RO
119 King Street West, 6th Floor
Hamilton ON L8P4Y7

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


Cristina De Leon-Culp
Member, Landlord and Tenant Board