

Order under Section 69
Residential Tenancies Act, 2006

File Number: TSL-17872-11

In the matter of: 1504, 59 EAST LIBERTY STREET
TORONTO ON M6K3R1

Between: Mun-yeo Ko

and

Khalid Abdul-haqq

I hereby certify this is a true copy of the Order
(Name of Document)

(Signature of Staff Member)

AUG 11 2011

Landlord

Landlord and Tenant Board Tenant

Mun-yeo Ko (the 'Landlord') applied for an order to terminate the tenancy and evict Khalid Abdul-haqq (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. The Landlord also claimed administration charges related to NSF cheques.

This application was heard in Toronto on August 10, 2011. Only the Landlord's representative Kenneth Yim attended the hearing.

All of the reasons for this order follow and no further reasons shall issue.

Determinations:

1. This application raised four issues: service of the application and Notice of Hearing on the Tenant, the timing of the filing of the application, the amount claimed by the Landlord for an NSF fee and the arrears of rent claimed.
2. First, the Landlord did not comply with Rule 11.2 of the Landlord and Tenant Board's Rules of Practice (the 'Rules') which says "the applicant shall file any necessary Certificate of Service within five days after the application and Notice of Hearing are served." No Certificate of Service had been filed but one was accepted at the hearing.
3. The Certificate of Service presented was confusing as it appeared to indicate service had been to a concierge and not the Tenant which would not, in my view, amount to proper service under the Rules. However, another box had been checked off, that the documents had been placed under the door of the rental unit, and I was told both methods of service had been used. I therefore found proper service of the application and Notice of Hearing.
4. Second, the Landlord filed the application on July 7, 2011, the day before the termination date on the Notice of Termination, July 8, 2011. Subsection 74(1) of the *Residential Tenancies Act, 2006* provides "a landlord may not apply to the Board...for an order terminating and tenancy and evicting the tenant based on a notice of termination (for arrears of rent) before the day following the termination date specified in the notice." That day would have been July 9, 2011 and the Landlord's notice of termination was therefore void.

5. Third, the Landlord claimed an administration charge of \$50.00 for an NSF fee when subsection 17.5. of Ontario Regulation 516/06 permits a maximum claim of \$20.00. The application was amended accordingly.
6. Fourth, the Landlord's representative requested arrears of rent going beyond those claimed in the application because the Tenant had not made any payments since the application was filed. It was pointed out to the Landlord's representative that if the Landlord intended to serve a new Notice of Termination based on arrears (as it appeared to me he did), he could not do so on arrears of rent ordered here. As a result, the Landlord's representative requested an order for arrears of rent only up to and including July 18, 2011 where the monthly rent is due on the seventeenth day of each month.
7. I therefore make the determinations that follow.
8. The Tenant has not paid the total rent he was required to pay for the period from May 19, 2011 to August 18, 2011.
9. The Landlord incurred charges of \$20.00 for administration charges related to cheques . tendered by or on behalf of the Tenant, which were returned NSF.
10. The Landlord collected a rent deposit of \$1,850.00 from the Tenant and this deposit is still being held by the Landlord.
11. Interest on the rent deposit is owing to the Tenant for the period from November 20, 2011 to July 8, 2011.

It is ordered that:

1. The Tenant shall pay to the Landlord \$3,790.00, which represents the amount of rent owing and compensation up to July 18, 2011 and the total charges related to an NSF cheque tendered to the Landlord by or on behalf of the Tenant.
2. The Tenant shall also pay to the Landlord \$170.00 for the cost of filing the application.
3. If the Tenant does not pay the Landlord the full amount owing on or before August 22, 2011, the Tenant will start to owe interest. This will be simple interest calculated from August 23, 2011 at 3.00% annually on the balance outstanding.

August 11, 2011
Date Issued

Toronto South-RO
79 St. Clair Avenue East, Suite 212, 2nd Floor
Toronto ON M4T1M6



Jean-Paul Pilon
Member, Landlord and Tenant Board

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

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