



Order under Section 69
Residential Tenancies Act, 2006

File Number: TSL-16760-20

In the matter of: K, 1130 DUNDAS STREET W
TORONTO ON M6J1X2

Between: Venancio Ferreira Landlord

and

Charity Chan Tenant

Venancio Ferreira (the 'Landlord') applied for an order to terminate the tenancy and evict Charity Chan (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused undue damage to the premises, or has used the rental unit or the residential complex in a manner that is inconsistent with use as a residential premises, and that has caused or can be expected to cause significant damage;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant;
- the Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex;
- the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person.

The Landlord seeks an order requiring the Tenant to compensation the Landlord for the damage, and for compensation for each day the Tenant remained in the unit after the termination date.

The combined L1/L2 applications were heard by video conference on June 1, 2021.

The Landlord, the Landlord's Legal Representative Anna Vinberg, and the Tenant attended the hearing.

Determinations:

1. The Tenant was in possession of the rental unit on the date the application was filed with the Board.
2. The Tenant has not paid the total rent the Tenant was required to pay for the period from April 1, 2020 to September 30, 2020. Because of the arrears, the Landlord served a Notice of Termination, effective May 17, 2020.
3. The Tenant took possession of the rental unit on April 1, 2016.
4. The monthly rent is \$1,828.33.
5. As the Tenant gave vacant possession of the rental unit to the Landlord on September 25, 2020, prior to this hearing, the L1 application is converted to an L9 application for arrears only. The L2 application is moot.

Preliminary Issue

6. The Landlord's Legal Representative A.V. raised an initial objection to the admission of the Tenant's proposed documentary evidence. A.V. submits that the Tenant failed to disclose the evidence in advance of the hearing, contrary to Rule 19.4 of the Board's Rules. The Landlord seeks a ruling that the Tenant's evidence be excluded from the hearing.
7. The Tenant submits that she filed documentary submissions on May 27th and on May 28th, copied to the Landlord. She stated that she experienced problems with the email delivery. The Tenant submits her submissions were made within the required time frame. She alleges that if she was late with her submissions, then the Landlord was also late in disclosing his documents, as he submitted them on the same dates.
8. In reviewing the Board's file, I note that both parties filed submissions between May 27th and 29th, which barely met the required timeframe, if at all.
9. Therefore, I do not find any, or in any event minimal, prejudice accrues to either party. I will exercise my discretion to admit evidence at the hearing in accordance with the Board's Rules.

The L/L9 Application for Non-Payment of Rent

10. The Landlord submits that the Tenant owes \$10,969.98 in arrears to September 30, 2020.
11. The Tenant does not dispute the amount of arrears.
12. The Tenant's position is solely based on a claim that her rent payments were lawfully suspended, indefinitely, as of April 1, 2020. She seeks an order of the Board relieving her of any legal obligation to pay the arrears of rent.

Suspension of Rent Payments Pursuant to Section 12 of the Residential Tenancies Act, 2006

13. The Tenant C.C. testified that she has a verbal tenancy agreement with the Landlord V.F..
14. She submits that her obligation to pay rent was suspended, effective April 1, 2020, pursuant to subsection 12(3) of the *Residential Tenancies Act, 2006* (the 'Act'). She testified that she chose to suspend her rent payments because V.F. refused to provide her with his proper, legal name and address, and other relevant contact information. C.C. testified that, as of the date of the hearing, she has never received this information.
15. The Tenant's evidence was that when she commenced residing in the rental unit as a subtenant in August 2015, the existing tenant only provided her with the Landlord's name, Vince Ferreira ("V.F."), and his telephone number. She testified that V.F. has been the Landlord since, and that she has paid the ongoing rent to V.F. directly, or through his agent.
16. Subsections 12(3) and (4) of the Act state:
 - (3) It 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.
17. Subsection 12(5) of the Act further states:
 - (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).
18. C.C. 's evidence is that between 2016 and 2020 she communicated regularly with V.F. with respect to all tenancy matters. She did so either verbally by telephone, by letter (which she posted on her unit door or left in a drop box), or by text message.
19. She testified that on April 1, 2020 she posted a rent cheque in an envelope addressed to "Vince" on the exterior of her front door of the rental unit. This was, she said, the accepted method of payment since she took possession of the unit. On occasion, an agent of V.F. would attend at her rental unit to collect the rent.
20. By April 6th, she stated, the April rent had not been collected. She removed the envelope from her door. She then posted a note on the door to V.F., asking him to knock after

which she would give him the rent. She testified that no one ever came to pick up the rent.

21. On April 11, 2020 the Landlord served an N4 Notice on the Tenant for arrears of rent for the month of April 2020. C.C. testified that, as a result of that Notice, she wrote to V.F. on April 21st asking to receive his proper legal name, address and other contact information, as well as the full names and contact information for the Landlord's agents.
22. In her letter, C.C. also informed V.F. that she was suspending payment of her rent pursuant to section 12 of the Act. C.C. testified that she posted the letter to her door and that it was taken by someone between April 21st and April 30th. The Tenant submitted the letter as evidence. The Landlord did not dispute that he received this letter. C.C. did not then pay rent for May 2020 or June 2020.
23. As of June 1, 2020, C.C. became aware that V.F. had retained A.V. to represent him. A.V. wrote to the Tenant on that date, confirming that the Landlord was V.F. The lawyer proposed that C.C. could e-transfer the rent to the Landlord's email address or deliver it by mail to V.F.'s residential address, the details of which she set out in the letter. The letter was presented to the Board by A.V..
24. C.C. confirmed that she received the letter. Despite this, C.C. testified that she continued to ask A.V. for this information, on June 5, June 27 and June 20, 2020.
25. C.C. stated that she had been asking V.F. for his full contact information since 2016. She did not substantiate this claim with documentary evidence. She testified that she was unaware that the Landlord was required to provide this information under the Act until April 2020, when she sought legal advice after being served with the N4 Notice.
26. The Landlord filed the L1 and L2 applications on July 10, 2020. The applications listed the Landlord's full name and address and two telephone numbers, in addition to an email address. The Tenant testified that she never received a copy of the applications until March 2021.

Analysis

27. I find that, if the Tenant had the right to suspend payment of rent, the triggering date would have been May 13, 2020. The Tenant's letter to the Landlord requesting the V.F.'s contact information was sent and received on April 21, 2020. The Landlord had 21 days, until May 12, 2020, to respond by providing the information requested.
28. The Landlord's lawyer A.V. responded with the requested information on June 1, 2020. Thus, under the circumstances, any right to suspend rent payments would have been extinguished on June 1, 2020, the day that Tenant received the requested information. In other words, C.C. may have been entitled to suspend her rent payment from May 13, 2020 to June 1, 2020.
29. I do not find the Tenant's evidence credible or persuasive with respect to her claims that she has never received the requested information from the Landlord. C.C. testified that

she did not receive the Landlord's full name and address until March 2021, when she says she received a copy of the Landlord's application. However, she also acknowledged receiving the letter from A.V. dated June 1, 2020, which clearly included the information C.C. had requested. Contradicting both these statements is the Tenant's testimony that as of the date of the hearing she still had not received the information.

30. I find that the Tenant had the obligation, and the opportunity, to pay the outstanding rent arrears for the months of April, May and June 2020 to the Landlord or the Landlord's lawyer on or after June 1, 2020, either by e-transfer or by mail/courier directly to the Landlord or to the lawyer's law firm. She made no effort to do so and, in fact, simply declined to make any payments.
31. There is no dispute that the Tenant then withheld payment of ongoing rent for the months of July, August and September 2020, prior to vacating the rental unit.
32. I find that at the time the Tenant took possession of the rental unit, the Tenant had already been provided with the Landlord's name and contact information for the purposes of (i) paying the rent and (ii) communicating with the Landlord about any tenancy-related issues.
33. The Tenant did not disclose any issues relating to the method of paying rent. There is no evidence that the parties experienced any problems with contacting the other and receiving timely responses between April 2016 and April 2020. Absent any evidence to the contrary, I find that Landlord's contact information remained unchanged during the tenancy.
34. In any event, I am satisfied that on June 1, 2020 the Landlord gave the Tenant his full address and contact information for service of documents and payment of rent arrears, satisfying the substance of the requirement of s.12 of the Act.
35. Therefore, there has been substantial compliance with the Landlord's obligations under s.12(3) of the Act, as provided for under s. 212 of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of September 25, 2020, the date the Tenant gave vacant possession of the rental unit to the Landlord.
2. The Tenant shall pay to the Landlord \$10,644.40*, which represents the amount of rent owing and compensation up to September 25, 2020.
3. The Tenant shall also pay to the Landlord \$201.00 for the cost of filing the applications.
4. If the Tenant does not pay the Landlord the total of \$10,845.40* on or by November 23, 2021, the Tenant will start to owe interest. This will be simple interest calculated from November 24, 2021 at 2% annually on the balance outstanding.

November 12, 2021
Date Issued

Elle Venhola
Elle Venhola
Member, Landlord and Tenant Board

Toronto South-RO
15 Grosvenor Street, 1st 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.

* Refer to section A on the attached Summary of Calculations.

**Schedule 1
SUMMARY OF CALCULATIONS**

File Number: TSL-16760-20

A. Amount the Tenant must pay as the tenancy is terminated:

Reasons for amount owing	Period	Amount
Arrears: (up to the termination date in the Notice of Termination)	April 1, 2020 to September 25, 2020	\$10,644.40
Amount owing to the Landlord on the order date:(total of previous boxes)		\$10,644.40
Additional costs the Tenants must pay to the Landlord:		\$201.00
Total the Tenant must pay the Landlord as the tenancy is terminated:		\$10,845.40

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