

Kanagathurai v Goldfeder, 2020 CanLII 120519 (ON LTB)

Date: 2020-09-03
File number: TSL-07617-19-VO-AM
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AMENDED

Order under Subsection 74(14)

Residential Tenancies Act, 2006
And section 21.1 of the Statutory Powers Procedures Act

File Number: TSL-07617-19-VO-AM

In the matter of: 6, 139 COWAN AVENUE TORONTO ON M6K2N1

Between: Paval Kanagathurai Landlord

and
Kelly Goldfeder Tenant

Kelly Goldfeder (the 'Tenant') filed a motion to set aside order TSL-07617-19 because, before the eviction order was enforced, the Tenant paid the amount required under [subsection 74\(11\)](#) of the *Residential Tenancies Act, 2006* (the 'Act') to void the order.

This motion was heard in Toronto on February 13, 2020.

Paval Kanagathurai (the 'Landlord') and the Landlord's legal representative M. Ruso and the Tenant attended the hearing.

The order contained a clerical error, this amended order was issued to correct the order dated February 24, 2020. The amendments under the ordered section paragraph 2 has been corrected and are underlined for ease of reference.

Determinations:

1. The Tenant has not previously made a motion under [subsection 74\(11\)](#) of the Act to set aside an eviction order during the period of the Tenant's tenancy agreement with the Landlord.
2. The Tenant has paid \$7,550.00 to the Board and this amount is the amount of rent arrears required under [subsection 74\(11\)](#) of the Act to void the eviction order.

Background Facts

3. The Tenant pays a monthly rent on the 15th day of each month, in the amount of \$737.50.
4. On May 21, 2019, the Landlord served the Tenant with an N4 Notice of Termination for Non-payment of Rent with a termination date of June 6, 2019. ("N4 notice") On July 5, 2019 the Landlord filed an L1 Application to evict the Tenant for non-payment of rent.
5. The Landlord's L1 application proceeded to a hearing on August 26, 2019 and the Tenancy was terminated and arrears of rent ordered on an uncontested basis. By order TSL-07617-19 issued on August 29, 2019, the Board held that the Tenant had failed to pay her rent for the period of March 15, 2019 to September 14, 2019 and that the Tenant also owed the Landlord the \$175.00 application filing fee.
6. On September 8, 2019, the Tenant filed a Request to Review the Order on the basis that she was not reasonably able to participate in the proceedings and because the order contained a serious error.
7. The Review hearing was on December 12, 2019 and the Board denied the Tenant's Review and the original order TSL-07617-19 issued August 29, 2019 was confirmed.
8. On December 18, 2019 the Tenant filed a Motion to Void an Eviction Order for Arrears of Rent. It was undisputed that the Tenant paid the amount of \$7,550.00 to the Board by the date of filing the Motion, being December 18, 2019.
9. The Tenant submitted her declaration and testified that she believed that this was the amount required to the date of filing her Motion to void the order; the amount represents rent owing from March 15, 2019 to January 14, 2020, plus the application filing fee (\$7,550.00).
10. The Landlord's legal representative submitted that the amount was not sufficient to void the order as the original order issued on August 29, 2019 stated at paragraph 5:

If the Tenant does not pay the Landlord the full amount owing on or before September 9, 2019, the Tenant will start to owe interest. This will be simple interest calculated from September 10, 2019 at 3.00% annually on the balance outstanding.

11. The Landlord argued that the order was not voided as interest was owing on the order of August 29, 2019 and that the interest owing had been applied to the Tenant's housing account. As a result, there are still arrears of rent owing on the housing account/ledger even though the Tenant paid an amount equal to the outstanding arrears.

Legal Analysis

12. A landlord's application for rent arrears is based on an N4 Notice of Termination for the Non-Payment of Rent. Pursuant to [section 2](#) of the [Residential Tenancies Act, 2006, S.O.2006, c.17](#) ('Act'), rent is defined as:

2(2) rent" includes the amount of any consideration paid or given or required to be paid or given by or on behalf of a tenant to a landlord or the landlord's agent for the right to occupy a rental unit and for any services and facilities and any privilege, accommodation or thing that the landlord provides for the tenant in respect of the occupancy of the rental unit, whether or not a separate charge is made for services and facilities or for the privilege, accommodation or thing, but "rent" does not include,

- (a) an amount paid by a tenant to a landlord to reimburse the landlord for property taxes paid by the landlord with respect to a mobile home or a leasehold home owned by a tenant, or
- (b) an amount that a landlord charges a tenant of a rental unit in a care home for care services or meals. [Emphasis added]

13. Pursuant to subsection 59 of the Act, a Landlord may apply to the Board if a tenant has not paid the legal rent owing. Subsection 59 states:

59(1) If a tenant fails to pay rent lawfully owing under a tenancy agreement, the landlord may give the tenant notice of termination of the tenancy... [Emphasis added]

14. The only type of debt that a landlord can claim under an N4 Notice of Termination is for unpaid rent. Thus, a landlord cannot unilaterally take rent money paid by a tenant and apply it to any other debt that may be owed by the tenant to create arrears of rent.

15. In order to void an Order for rent arrears, the Act clearly sets out what a tenant is required to do. A tenant is required to pay all "rent" owing as of the date of the payment in order to void an order pursuant to [subsection 74\(11\)](#) of the Act:

74(11) (11) A tenant may make a motion to the Board, on notice to the landlord, to set aside an eviction order referred to in subsection (3) if, after the order becomes enforceable but before it is executed, the tenant pays an amount to the landlord or to the Board and files an affidavit sworn by the tenant stating that the amount, together with any amounts previously paid to the landlord or to the Board, is at least the sum of the following amounts:

1. The amount of rent that is in arrears under the tenancy agreement.
2. The amount of additional rent that would have been due under the tenancy agreement as at the date of payment by the tenant had notice of termination not been given.
3. The amount of NSF cheque charges charged by financial institutions to the landlord in respect of cheques tendered to the landlord by or on behalf of the tenant, as allowed by the Board in an application by the landlord under section 87.
4. The amount of administration charges payable by the tenant for the NSF cheques, as allowed by the Board in an application by the landlord under section 87.
5. The costs ordered by the Board. [Emphasis added]

16. I find that the Tenant has paid the full amount required to void the order in accordance with subsection 74(11) -she paid \$7,550.00 to the Board by December 18, 2019. That represented all of the rent arrears and ordered costs owing as of that date.

17. I find that the Landlord is not entitled to apply the interest owing to the amount required to void the order as this is not permitted under [subsection 74\(11\)](#) of the Act.

18. The Landlord's legal representative further argued that the Order should not be voided as the Tenant had not paid the rent for the month of January. It was submitted that at the time of hearing of the Motion, the Tenant was in arrears of rent.

19. The Tenant disputed this and testified that her January's rent had been paid.

20. I find that the payment of the January 2020 rent is not relevant to the Motion as subsection 74(11) requires the Tenant pay all of the rent arrears ordered owing as of the date of payment. Any rent that subsequently becomes owing cannot be considered in this motion.

21. I find that the Tenant has paid \$7,550.00 to the Board and this amount is the amount of rent arrears required under [subsection 74\(11\)](#) of the Act to void the eviction order

It is ordered that:

1. Order TSL-07617-19 is void and cannot be enforced by the Landlord.
2. The amount of \$7,550.00 has been paid into the Board by the Tenant. The amount of **\$2,300.00** has already been paid out to the Landlord **on December 18, 2019**. The remaining funds paid into the Board in the amount of **\$5,250.00** shall be paid out to the Landlord, along with any interest accrued to date.

February 24, 2020 Date Order Issued

September 3, 2020

Date Order Amended

Member, Landlord and Tenant Board

Nicola Mulima

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.

Note: The Tenant cannot make another motion under [subsection 74\(11\)](#) of the Act to set aside an eviction order during the period of the Tenant's tenancy agreement with the Landlord. When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party(ies) named in this order. The cheque will be in the amount directed plus any interest accrued up to the date of this order.