



Order under Section 69 Residential Tenancies Act, 2006

Citation: Qaisar v Pond, 2023 ONLTB 16344

Date: 2023-02-01

File Number: LTB-L-028046-22

In the matter of: 2 TARMACK DR
RICHMOND HILL ON L4E0E6

Between: Aftab Qaisar Landlord

And

David Robert Pond Tenant Suzanne Burgess

Aftab Qaisar (the 'Landlord') applied for an order to terminate the tenancy and evict David Robert Pond and Suzanne Burgess (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 17, 2023.

The Landlord Aftab Qaisar and the Landlord's Legal Representative Jorge Steinmetz and the Tenant Suzanne Burgess and the Tenants' Legal Representative Brett Lockwood attended the hearing.

Determinations:

Preliminary Issues

N4 Notice

1. As a preliminary issue the Tenant pointed out the rent tables on the N4 Notice of Termination did not accurately set out the monthly rent that was charged. While in dispute, the parties agreed the monthly rent is either \$4,500.00 or \$4,800.00. The first line of the rent tables on the N4 Notice served on the Tenants stipulates the rent charged for March 20, 2022 until April 19, 2022 was \$2,010.78 and that the rent paid was \$0.00. Both of these amounts are wrong. The Landlord's accompanying letter states the rent charged for

this period was \$4,800.00. Amounts were deducted for money being held in a deposit by the Landlord as well as furnace repair and central vacuum service. The accompanying letter states the amount paid was \$0.00. If the Landlord is reducing the Tenants' deposit by an amount to pay the monthly rent, then the Tenant is not paying \$0.00.

2. As the amount of rent charged and the amount of rent paid for the period March 20, 2022 until April 19, 2022 were incorrectly stated on the N4 Notice I found it to be defective. The N4 Notice did not clearly and accurately set out the amounts the Tenant is entitled to consider and understand when deciding whether or not to void the Notice. I can infer any tenant that has paid more than half the monthly rent would find it confusing to receive a Notice of Termination stating they had paid none of it.
3. As a result of my finding the N4 Notice to be defective, the Landlord opted to proceed with the application seeking an order for arrears only.

Section 82

4. At the hearing the Tenants sought to raise maintenance issues under section 82 of the Act. The Landlord objected and stated they had not received the advance notice of the allegations as required by section 82 of the Act and Rule 19.4 of the Board's Rules of Procedure. The Tenant is required to serve the Landlord and file with the Board a description of each issue they intend to raise at the hearing. While the Tenant did file with the Board the description required, they did not serve the Landlord seven days prior to the hearing.
5. The Tenants' evidence was they mailed the notice to the Landlord on either the 9th or 10th of January 2023. Given the Tenant was not sure when it was mailed and the Board considers a document served five days after mailing, I found the Tenant had not provided the Landlord with the seven days of notice they are entitled to. The Tenant argued that a piece of evidence uploaded to the Board's online portal that referenced notice of entry proved the Landlord received the notice from the Tenant.
6. I found the Tenant's argument entirely speculative in nature as the issues intended to be raised were maintenance ones. Even if the Tenant is correct, this does not eliminate the requirement the Landlord be provided with seven days notice of claims intended to be raised under section 82. As a result, I did not allow the Tenants' section 82 claims to be heard. I advised the Tenant they were free to file their own application with the Board to have their issues heard.

Rent Arrears Application

7. The Landlord served the Tenant with a invalid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.

8. As of the hearing date, the Tenants were still in possession of the rental unit.
9. The Landlord stated the lawful rent is \$4,800.00 and it is due on the 20th day of each month. The Tenant submitted the lawful rent is \$4,500.00. The parties relied on the same lease document to support their respective arguments.
10. The lease agreement is for a one year period that commenced on July 20, 2021. The document is initialed and signed by both the Landlord and the Tenant. It stipulates the monthly rent is \$4,800.00. The parties agreed this amount was originally \$4,500.00 and changed to \$4,800.00 two days later. Both dates occurred prior to the lease commencing on July 20, 2021. I will note the lease document shows the amendment of the monthly rent from \$4,500.00 to \$4,800.00.
11. No evidence was called regarding discussions or the circumstances in which the parties chose to change the monthly rent to \$4,800.00.
12. The Tenant's Legal Representative submitted the only other change to the lease was the addition of "grounds/grass/sprinkler maintenance" to be performed by the Landlord. The Tenant's Legal Representative submitted that this amounts to an illegal rent increase given the Landlord is already required to maintain the grounds of the residential complex. I do not agree. The parties signed the amended lease for the higher amount and it was signed prior to the commencement date of July 20, 2021.
13. In the absence of any testimony or other evidence surrounding the circumstances in which the parties signed the amended lease, I find it to be valid. The parties agreed to the increased amount before the lease had started. As a result, I find the monthly rent to be \$4,800.00 per month and it is due on the 20th day of every month.
14. Based on the Monthly rent, the daily rent/compensation is \$157.81. This amount is calculated as follows: \$4,800.00 x 12, divided by 365 days.
15. The Tenant has not made any payments since the application was filed.
16. The rent arrears owing to January 19, 2023 are \$45,210.78. I raised with the Landlord's Legal Representative the limit to the Board's monetary jurisdiction. The Landlord's Legal Representative understood any amount above the \$35,000.00 limit of the Board would be extinguished and wanted to proceed.
17. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
18. The Tenant conceded the rent arrears were at least \$35,000.00 and the parties agreed the Tenants would have six months to make payment prior to interest beginning to accrue on any outstanding balance.

It is ordered that:

1. The Tenant shall pay to the Landlord \$35,000.00. This amount includes rent arrears owing to January 19, 2023 and costs.

2. If the Tenants do not pay the full amount owing to the Landlord by August 1, 2023 they will start to owe interest. This will be simple interested calculated from August 2, 2023 at 5.00% annually the balance outstanding.

February 1, 2023

Date Issued

John Cashmore

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay for rent arrears owing to January 19, 2023

Rent Owing To January 19, 2023	\$45,210.78
Application Filing Fee	\$186.00
Total amount of rent arrears and costs	\$45,396.78
Total the Tenant must pay to the Landlord	\$35,000.00