



Order under Section 69 Residential Tenancies Act, 2006

Citation: Thomas v Thomas, 2023 ONLTB 14794

Date: 2023-01-19

File Number: LTB-L-024788-22

In the matter of: Upper unit, 13 John St
Hagersville ON N0A1H0

Between: Bonnie Nolan and James Thomas Landlords

And

Christine Thomas Tenant

Bonnie Nolan and James Thomas (the 'Landlords') applied for an order to terminate the tenancy and evict Christine Thomas (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 4, 2023.

Only the Landlords attended the hearing.

As of 1:44 p.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. As of the hearing date, the Tenant was still in possession of the rental unit.
2. The lawful rent is \$1,100.00. It is due on the 1st day of each month.
3. Based on the Monthly rent, the daily rent/compensation is \$36.16. This amount is calculated as follows: \$1,100.00 x 12, divided by 365 days.
4. The Tenant has not made any payments since the application was filed.
5. The rent arrears owing to January 31, 2023 are \$14,884.80.
6. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
7. The Landlords collected a rent deposit of \$1,100.00 from the Tenant and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.

Defective N4 Notice of Termination

8. The first N4 served on March 19, 2022 names Christine Thomas as the Tenant and Bonnie Nolan as the Landlord. The second N4 served on November 24, 2022 names Christine Thomas and Lee Maracle as Tenants and Bonnie Nolan and James Thomas as Landlords. The application was filed on May 1, 2022 based on the termination date of April 03, 2022. As per the Landlord Bonnie Nolan's testimony the lease states two Tenants which were not properly identified on the first N4. Once the Landlords realized the mistake, they served a new N4 with names of both Tenants and Landlords.
9. The *Residential Tenancies Act, 2006* (the "Act") at section 59(2) requires particular contents of an N4 Notice of Termination, which includes correctly identifying the tenant. Since the N4 Notice did not properly give the Tenant the opportunity to understand who needs to pay the rent arrears and to whom, the N4 Notice is rendered invalid.

Amending L1 Application to L9 Application for Arrears and Costs Only

10. As a result of the defects with the N4 Notice, the options were explained to the Landlords including the possibility of requesting consent to withdraw this L1 Application to correct the N4 Notice, which may lead to filing a new L1 Application if they wish to pursue eviction based on these periods of rent arrears. After considering the time that had elapsed since the N4 notice was served and the time it had taken to arrive at the hearing, the Landlords requested permission to convert this application to an L9 application for arrears only, without seeking eviction. I consented to their request to seek only arrears based on *Nejad v Preddie*, 2016 ONSC 4348 (Div. Ct.).
11. I granted the Landlords' request to amend the application as I was satisfied that there was no prejudice or unfairness to the Tenant since the N4 notice contemplates that arrears may be sought.

It is ordered that:

1. The Tenant shall pay to the Landlord \$13,327.88. This amount includes rent arrears owing up to January 31, 2023 and the cost of filing the application.
2. If the Tenant does not pay the Landlords the full amount owing on or before January 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 31, 2023 at 5.00% annually on the balance outstanding.

January 19, 2023

Date Issued

Sheena Brar

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.