



Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: Daley v Linton, 2023 ONLTB 65741

Date: 2023-09-27

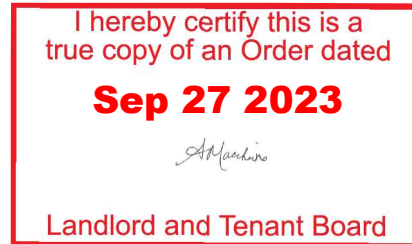
File Number: LTB-L-075856-22-RV

In the matter of: Basement - 1, 10 Collanus Court
Etobicoke Ontario M9W6G5

Between: Gian Daley

And

Fernando Linton



Landlord

Tenant

Review Order

Gian Daley (the 'Landlord') applied for an order to terminate the tenancy and evict Fernando Linton (the 'Tenant') because:

- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was resolved by order LTB-L-075856-22 (TNL-24946-20) issued on March 22, 2023.

On April 6, 2023, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On April 11, 2023 interim order LTB-L-075856-22-RV-IN was issued, staying the order issued on March 22, 2023.

The review request was resolved by LTB-L-075856-22-RV-IN2 issued on May 26, 2023 that granted the review.

The application was heard de novo by videoconference on July 20, 2023.

The Landlord, the Landlord's Representative, James Dondo, the Tenant and the Tenant's Representative, Yodit Edenmariam attended the hearing.

Preliminary Issue:



The Landlord's Representative indicated that they did not receive the order issued on May 26, 2023, but the Board's record shows it was emailed to the Landlord's Representative on May 25, 2023. The email address was correct and there was no record on the Board's file that it was returned as undelivered. The Landlord's Representative also confirmed he had access to the LTB Tribunals Ontario Portal which contained a copy of the order. The order issued May 26, 2023, granted the review and therefore the merit of the L2 application was the only issue before me. The Landlord was given time to read the order before the merit hearing proceeded. At no time did the Landlord request an adjournment.

Determinations:

1. Based on the best evidence before me, I find the Landlord has not met the evidentiary burden to establish that compensation was paid to the Tenant on or before January 31, 2020 which was the termination date on the N12 Notice because of the following:
2. The Board must be satisfied, before issuing an order terminating the tenancy that the Landlord has complied with section 48.1 and 55.1 which requires a landlord to compensate the tenant, equivalent to one month rent, before the termination date on the N12 Notice:
3. Subsection 48.1 states, "A landlord shall compensate a tenant in an amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant if the landlord gives the tenant a notice of termination of the tenancy under section 48. 2017, c. 13, s. 8."; and
4. Subsection 55.1 of the Act states, "If the landlord is required to compensate a tenant under section 48.1, 52, 54 or 55, the landlord shall compensate the tenant no later than on the termination date specified in the notice of termination of the tenancy given by the landlord under section 48 or 50."
5. The Landlord testified he delivered a cheque dated January 30, 2020, to the Tenant on January 29, 2020 which was before the termination date of January 31, 2020 on the N12 Notice. He further stated the cheque was given to the Tenant by hand and verified it was not accompanied by a note or covering letter nor was it referenced in either a text or email. Other than producing a copy of the cheque that shows the issuance date, the Landlord had no other evidence available to corroborate his testimony.
6. On the contrary, the Tenant testified that the cheque was given to him on February 1, 2020, and he produced photographs of the envelope and cheque digitally stamp dated February 1, 2020 with photo identification numbers 130052 and 130033 which he stated were taken on the same day. Since it was one person's word over the other, the photographs were material to this case because they capture a point in time which outweighs conflicting testimonies and their recollection of an event that took place over 3 and half years ago.

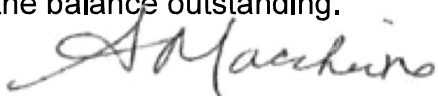


7. I find it more likely than not that the compensation was given on February 1, 2020 because the Tenant testified that the photograph was taken on the same day the cheque was given, that he did not tamper with the digital photograph and that he has no technical knowhow to change the digital information of the photograph. Furthermore, just as a photograph can be taken on any date, a cheque can also be issued on any date. Hence, it's not enough that the Landlord produce a copy of the cheque dated January 30, 2020 when the N12 was issued on November 28, 2019, two months earlier.
8. I considered the numerical identification number of the photographs was not sequential but submissions from the Landlord's Representative is based on speculation that photographs were taken at different times. There was no evidence before me that established the Tenant's phone stores photos with sequential numbers, and it's not unreasonable that the file names are by randomly generated numbers.
9. The burden of proof rests on the Landlord and based on the totality of the evidence, I find there was not enough evidence to establish that the compensation was paid with certainty on or before January 31, 2020. Since the Landlord has not met the statutory requirements of subsection 55.1, the Landlord's application must be dismissed.
10. The Tenant cashed the cheque on February 21, 2020, therefore, the Tenant must repay the Landlord \$500.00 as required by section 73(1) of the Residential Tenancies Act, 2006 (the 'Act') which states, "If the landlord compensated the tenant under section 48.1, 52, 54 or 55, as the case may be, in connection with a notice of termination under section 48 or 50 and the Board refuses to grant an application under section 69 for an order terminating the tenancy and evicting the tenant based on the notice, the Board may order that the tenant pay back the compensation to the landlord."
11. No finding has been made on the substantive issue on whether the Landlord's child genuinely intends to occupy the rental unit.

It is ordered that:

1. The L2 application is dismissed.
2. The Tenant shall pay the Landlord \$500.00 on or before October 8, 2023.
3. If the Tenant does not pay the Landlord the full amount owing on or before October 8, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 9, 2023, at 7.00% annually on the balance outstanding.

September 27, 2023
Date Issued



Sandra Macchione
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.