



Order under Section 69
Residential Tenancies Act, 2006

File Number: TSL-15740-20

In the matter of: 520, 20 JOHN STREET
TORONTO, ON M5V 0G5

Between: Marita Coelho Landlord

and

Karim Aziz Tenant

Marita Coelho (the 'Landlord') applied in this L9 application seeking an order to collect rent arrears from Karim Aziz (the 'Tenant').

This application was heard by telephone/video-conference on December 2, 2021.

The Landlord Marita Coelho attended the hearing. The Tenant Karim Aziz attended the hearing with his legal representative Clive Preddie. The Tenant's witness Muhammad Adnan Afzal attended a portion of the hearing.

Determinations:

1. The Landlord alleged the Tenant did not pay the total rent the Tenant was required to pay for the month of April, 2020. Because of the alleged arrears, the Landlord filed this L9 application with the Board on April 30, 2020.
2. The Tenant was in possession at the time the L9 application was filed. The parties disputed the vacate date as described below.
3. There were no NSF or administrative fees claimed.
4. The monthly rent was \$2,290.00, due on the first (1st) day of each month.
5. The Tenant made no payments to the Landlord after the application was filed on April 30, 2020 but before the hearing date.
6. On December 14, 2014 (the tenancy started February 1, 2015), the Landlord collected a last month's rent deposit of \$2,100.00 from the Tenant. Interest had never paid on the rent deposit. Interest is owing on the rent deposit from the date of collection, December 14, 2014, up to the date determined to be the vacate date.

Disputed Notice of Termination & Vacate Date

7. While the Landlord did not characterize her submissions in this way, I deduced from the evidence that she was alleging proper notice of termination had never been given to her by the Tenant.
8. The Landlord claimed that she received an email on October 29, 2020 from Reem Haroon (the Tenant's lawyer) letting her know the key fobs had been left with concierge. The Landlord testified that this was the first time she became aware the Tenant had returned key fobs – therefore, it was her submission that the vacate date was October 29, 2020 since the Tenant had possession and control over the rental unit until the key fobs were returned. The Tenant admitted on cross-examination that his lawyer's letter failed to mention when exactly the key fobs had been left at concierge, only that they were ready for pickup. The Landlord testified that she went the next day on October 30, 2020 to pickup the key fobs.
9. The Tenant claimed that he had given notice to terminate several months prior. The Tenant alleged his letter to the Landlord dated March 14, 2020 provided written notice that the tenancy would be ending on May 1, 2020. (Note: the letter was actually from the Tenant's business Living Suites Toronto, which the Landlord speculated was the Tenant's operation of a short-term furnished rental business out of the rental unit. This issue was not disputed during the hearing.)
10. Section 44(2) of the *Residential Tenancies Act, 2006* (the 'Act') allows a tenant to give written notice to their landlord to end a monthly tenancy. The notice must give at least 60 days before the termination date which must fall on the last day of a rental period.
11. Based on the Tenant's own admission, his letter of March 14, 2020 did not provide the Landlord with at least 60 days of notice required by the *Act*. His letter provided a termination date of May 1, 2020 instead of May 31, 2020 (which should have been the earliest available termination date which fell at the end of a rental period).
12. I found further problems with the Tenant's letter of March 14, 2020. Paragraph 2 stated that since rent was already paid for March, that the last month's rent deposit should be applied to April 2020. Again, I found this to violate the *Act*. If the Tenant had given valid notice on March 14, 2020, the final month of the tenancy should have been May 2020 and the rent deposit should have been applied for the month of May 2020. The *Act* is clear in section 106(10) that the landlord shall apply a rent deposit for the last rent period before the tenancy terminates.
13. The Landlord admitted she received the Tenant's March 14, 2020 letter. In response, she wrote to the Tenant by email on March 17, 2020. In that email she advised she was attaching an N9 form that she required him to fill out. She also wrote that the notice required was 60 days hence the termination date should be May 31, 2020. She seemed willing to entertain the idea of giving back the rent to the Tenant if a new tenant could be found for May 1-31, 2020, but she wrote near the end of her email that it may be challenging to find someone new given the current scenario. (I note this was just after the COVID19 provincial emergency shutdown which came into effect on March 16, 2020.)

14. I found credibility problems with the Tenant based on his testimony about what happened thereafter. Firstly, the Tenant wrote the termination date on the N9 form as May 1, 2020, even though the Landlord's email of March 17th said it should be May 31, 2020.
15. Secondly, the Tenant filled in the signature date on the N9 as March 14, 2020. I found it illogical how the N9 could be backdated 3 days when the blank N9 was first provided to the Tenant by the Landlord in her March 17th email. The Tenant made no submissions that he had filled in any N9 form earlier than March 17, 2020.
16. Notwithstanding the defects in the March 14, 2020 letter, it appears the Landlord was willing to assist the Tenant to perfect the notice by requesting a completed N9 so that she could have proper written notice on record. She provided a blank N9 form with her March 17, 2020 email. Unfortunately, the Tenant filled in the N9 form incorrectly by again referring to the termination date as May 1st instead of May 31, 2020. If it had been completed properly in accordance with the *Act*, the N9 could have served as the first proper written notice to the Landlord regarding a termination of tenancy effective May 31, 2021. However, due to the same deficiencies as the March 14th letter, the N9 form was also invalid notice.
17. The Tenant's legal representative characterized the N9 as an addendum to the written notice of termination provided by the Tenant's letter of March 14, 2020. I disagree. I already explained above why the March 14, 2020 was invalid, did not comply with the *Act*, and was not proper notice of termination. Submitting a different form of written notice, which contained the same 2 fatal defects as the first written notice, could not cure either the first notice, or stand as notice itself.
18. Similarly, offering money several months later (ie: offering to pay for rent for the month of May 2020) did not cure fatal defects in either the March 14th letter or N9 notice of termination. The reason 60 days' notice is required from the outset is so landlords can have the benefit of that time to arrange their affairs and seek a new tenant if desired.
19. The Tenant's lawyer Kormans LLP sent the Landlord a letter on June 29, 2020. The statements made by the unknown writer (signature page was not provided) in paragraph 4 did not comply with the *Act* because the writer reiterated the same deficiencies as the Tenant by insisting the March 14th letter was valid notice, and again reiterated that the termination date was May 1, 2020.
20. The letter from Kormans LLP confirmed that rent for May 2020 had not been paid since it stated "our client will pay you what is owing for May, 2020". Offering this at the end of June 2020 did not cure the deficient notices of termination given March 14 or 17, 2020.
21. A significant omission from the letter, which will be described further below, was the fact that there was no mention of when exactly the key fobs had been returned, or that they had ever been returned.

Disputed Return of Keys and Fobs

22. Note: the issue of exactly how many keys and fobs there were did not arise during the hearing. I refer in this order to keys or fobs interchangeably, but there may have been specific sets for various doors (ie: outside entry, storage, front door of rental unit, etc). The overall number of keys are not important to my analysis as it is common practice for tenants to be expected to return all keys/fobs at the end of a tenancy.
23. The Tenant testified that he moved out of the rental unit on March 20, 2020. He said he returned the keys on March 20, 2020 to the concierge. He testified the rental unit was not used after March 20, 2020. He testified that 99.9% of the items left in the rental unit were the Landlord's since it was a furnished rental. He admitted he may have left a few personal items behind but his representative submitted they were abandoned. The Tenant alluded that he moved so quickly (only 6 days after his March 14th letter) because it was COVID19 and he didn't want to be in the city.
24. I highly doubt that the Tenant returned all keys/fobs to the concierge on March 20, 2020, because if he had, why didn't he tell the Landlord about it? The Tenant was in direct contact with the Landlord on both March 14, 2020 and March 17, 2020. In fact it was the Tenant himself who first initiated contact on March 14, 2020 by attempting to provide written notice of termination directly to the Landlord. Next, the Tenant emailed the N9 form he had filled out directly to the Landlord on March 17, 2020.
25. Perhaps it is possible the Tenant was only referring to his own set of keys, which he may have returned at a different time compared to any copies his associate or others may have had – but I did not hear any submissions about it.
26. The Tenant submitted that his associate Mr. Afzal dealt with many issues throughout the tenancy such as cable and internet. While I don't doubt Mr. Afzal was an agent-of-sorts for the Tenant and did communicate about some issues such as internet or cable, I found the testimony of the Tenant's witness and the alleged texts between the witness and the Landlord's son Marvin raised further credibility issues.
27. I will note that there was a dispute between the parties over which people were communicating with each other regarding the tenancy. The Landlord admitted she has a son named Marvin but denied his involvement in dealing with the rental unit. On the other hand, the Tenant relied on his witness Mr. Afzal to show they were dealing with Marvin.
28. Mr. Afzal's texts did not corroborate the Tenant's story that he moved out March 20, 2020 or returned keys/fobs on March 20, 2020. This is another reason I found credibility issues with the Tenant's testimony.
29. The first text conversation between Mr. Afzal and "Marvin" happened on March 25, 2020. Marvin indicated to "Adnan" (Mr. Afzal) they were "Still waiting to hear from you. Please let me know." Mr. Afzal replied, "I will have Karim reply today on it officially. When do you wish to start the showing so we can arrange for the keys for you. Earlier its let out the better for us as well."

30. Mr. Afzal seemed to be operating on the belief that no keys/fobs had been returned since his message to Marvin said "...so we can arrange for the keys for you". Mr. Afzal also seemed to be relying on Karim (the Tenant) to reply "officially" on the issue of termination of tenancy. These messages lead me to consider that the Tenant and/or his witness were still in care, control, and possession of the rental unit on March 25, 2020 since they were trying to coordinate showings. This contradicted the Tenant's testimony that they had moved out March 20, 2020.
31. "Marvin" then replied that they were still waiting to hear back officially from Karim regarding the N9 form. Mr. Afzal wrote "we have sent the notice and that should be acknowledged from that date please". Marvin replied, "Just to clarify again tenancy end date should be May 31."
32. The second text conversation between Mr. Afzal and Marvin happened in the Spring and Summer, 2020. Mr. Afzal testified that he text Marvin on May 20, 2020 asking if they could talk. He said Marvin replied the next day on May 21, 2020 but they did not actually connect that day. On May 23, 2020 Mr. Afzal reached out by saying "Hi Marvin. Missed your message. Am available anytime today after 5." There was no reply after May 23, 2020. Mr. Afzal's next message was on July 21, 2020 stating "Hi Marvin. Just checking whether you were able to pick up your keys from the front desk at 300 front"
33. The text on July 21, 2020 was several months after the Tenant alleged he moved out on March 20, 2020. Mr. Afzal did not provide any explanation for the delay or what conversations transpired in between the text messages.
34. I found it strange that the front desk at a different address "300 front" was referenced in the final text, but neither party raised this as an issue during the hearing.
35. I also found it odd that through the entire sequence of events described above, neither the Tenant nor Mr. Afzal proactively confirmed with the Landlord or Marvin that the keys/fobs had been received. The reasonable person who was ending a tenancy would likely confirm their landlord had gotten possession back. While possession is not solely determined by keys/fobs, it is an important factor to consider. I would have expected any reasonable and prudent tenant to confirm that possession had been properly turned over and that keys/fobs had been received – especially if there were both a furniture and key deposit they were hoping to get back, and to ensure they were not on the hook for ongoing/future rent.
36. I found it questionable why neither party had Marvin testify as a witness. The Landlord should have known the Tenant may refer to conversations between Muhammad Adnan Afzal and Marvin since this disclosure was provided to her at least a week before the hearing. The Landlord could have asked her son Marvin to attend the hearing as her witness, to corroborate her claims that he was not involved with the rental.
37. Similarly, the Tenant should have summonsed Marvin as a witness to corroborate the conversations Mr. Afzal said he had with Marvin. Marvin's testimony would have been especially helpful considering Mr. Afzal admitted some of the communication between himself and Marvin was by phone, not text. Also, Mr. Afzal seemed to have forgotten

some of the details of what happened in between the time periods of the various texts. Perhaps Marvin could have filled in those gaps.

Disputed Possession of Rental Unit during Spring/Summer of 2020

38. What happened next made me question the credibility of the Landlord. Although she testified that Marvin had not been involved with the rental unit, I found it quite the coincidence that the day after Mr. Afzal's final text to Marvin on July 21, 2020 asking whether he was able to pick up the keys, that she entered the rental unit on July 22, 2020 to do an inspection and take pictures of various items. The Landlord probably heard about Mr. Afzal's text to Marvin on July 21, 2020, thus she entered the rental unit the very next day.
39. Her pictures showed some furniture (ie: round glass dining table, 4 chairs, brown side table, bed with pillows) and some smaller items (ie: vacuum, coffee container, table lamp, fan). The Landlord claimed these personal effects showed the Tenant was still in possession of the rental unit.
40. The Tenant disagreed. He said the furniture belonged to the Landlord since the rental unit was supposed to be furnished. The Tenant admitted that since it was COVID19 there may have been a few personal items left behind, but nearly everything left behind was the Landlord's.
41. The Landlord submitted that other events occurred later in the Summer 2020 such as having to enter the rental unit on an emergency basis to clean up a water leak from the fridge/freezer, and alleging the utility bills throughout that period of time pointed to the rental unit continuing to be occupied or used by the Tenant or their business. I did not find these submissions particularly relevant based on the other evidence presented and findings made.

Remedy

42. I note that all this occurred during a challenging time. COVID19 had just plunged the world into a pandemic. I recall that the provincial government issued a lockdown on March 16, 2020 prohibiting non-essential travel and other restrictions. Throughout the year in 2020 there were various restrictions and lockdowns.
43. I found creditability issues with both sides. On one hand, the Landlord tried to present the story that she dealt with the tenancy herself and that her son Marvin was not involved. I highly doubt this. The testimony from the Tenant (that he authorized his associate to deal with some matters regarding the tenancy), Mr. Afzal's testimony (that he had phone calls and texts with the Landlord's son Marvin), and the text conversations dated March 25, 2020 onwards, all revealed that the Landlord's son Marvin was likely involved in some capacity. The Landlord failed to bring her son as a witness to corroborate her story that he had not been involved. The Landlord coincidentally entered the rental unit for inspection one day after the final text from Mr. Afzal to Marvin.

44. The Landlord knew or ought to have known on March 14, 2020 that her Tenant was trying to cancel the contract and terminate the tenancy. I agree with her that she did not receive the benefit of at least 60 days notice. Notwithstanding that, she was willing to have the Tenant properly fill out an N9 form. Again, the Tenant failed to comply with the Act, but again, the Landlord knew or ought to have known the Tenant was trying to end the tenancy.
45. Even though the Tenant made fatal defects in both notices, I do not agree with the Landlord's attempt to try to act like she never knew the Tenant was leaving all the way until the letter from the Tenant's lawyer on October 29, 2020. She knew the earliest termination date could have been May 31, 2020 since she provided that date herself to the Tenant.
46. I find that after May 31, 2020 had passed, the Landlord failed to mitigate her losses as required by section 16 of the Act. The Landlord relied on the deficiencies in the Tenant's termination date to sit back and do nothing to try to find out for herself if the Tenant had vacated through the Spring, Summer, and beginning of Fall, 2020. She conveniently claimed the Tenant had been in possession of the rental unit that whole time since she saw some items left inside and had not gotten the keys/fobs back. As the landlord, it was her duty to also proactively try to find out if the unit may have been abandoned.
47. I find on a balance of probabilities that the Landlord learned about the return of the keys/fobs on July 21, 2020 when Marvin received the text from Mr. Afzal. The very next day she inspected the unit on July 22, 2020. She also had to arrange an emergency entry to deal with a water leak. She knew the Tenant had not responded to her notice of entry. She knew or ought to have known that the rental unit had been abandoned or vacated through the summer months. She took pictures of mould in the fridge, which should have indicated to her that it was likely not being used. The letter from Kormons LLP dated July 29, 2020 also mentioned the Tenant had vacated. Even though the termination date of May 1, 2020 was incorrect, the letter from Kormons LLP should have given the Landlord enough information to try to communicate with the Tenant to find out whether the rental unit was being used or not, and where her keys/fobs were. I also find it strange the Landlord did not reach out to the Tenant regarding unpaid over half a year.
48. I find the Landlord failed to proactively try to find out from the Tenant what was going on with the tenancy. I find it opportunistic of her to try to claim for rent arrears for over half a year. She knew or ought to have known the Tenant's short-term rental business had probably been drastically reduced or even stopped after COVID19 lockdowns came into effect.
49. Much like the credibility issues I had with the Landlord, I do not believe the Tenant was completely honest either. Knowing that COVID19 lockdowns were going to seriously impact their short-term furnished rental business, I find the Tenant and his witness tried to concoct the story that they gave notice before the lockdown came into effect. They tried to get out of the rental contract early and tried to get off the hook from paying any further rent after March 2020. The Tenant incorrectly tried to apply the last month's deposit to April 2020 and failed to provide at least 60 days notice to terminate the tenancy on several occasions. While I do not doubt the rental unit was barely used or maybe not at

all after COVID19 lockdowns came into effect, this does not remove the Tenant from the responsibility to continue to pay rent until the tenancy is properly terminated. Improper notice was given on both March 14 and 17, 2020. The Tenant back-dated the N9. I do not believe the Tenant gave back all keys/fobs on March 20, 2020. He failed to communicate either that he had moved out on March 20 or that he had returned the keys/fobs to concierge directly with the Landlord, even though he had been communicating only with her in the days before on March 14 and 17, 2020. He continued to use the wrong termination date of May 1 instead of changing it to May 31, 2020. He never provided proof the rent had been paid for either April or May 2020. In his testimony at the hearing, he said he “will” pay for May, and the letter from Kormon’s LLP offering to pay May 2020, indicated to me that the rent for May 2020 remained unpaid as of the hearing date. The Tenant tried to correct his invalid notice by being willing to pay rent up to May 31, 2020. His lawyer’s letter from June 29, 2020 failed to refer to the date the keys/fobs were actually returned.

50. In the circumstances, I find both sides failed to treat each other proactively and honestly. Both were not forthright with the Board. I find the fault lies more with the Tenant since he started off the entire process incorrectly in both his March 14, 2020 letter and in the N9 by failing to give May 31, 2020 as the termination date. I found the Landlord slightly more credible than the Tenant since the Tenant’s own witness provided contradictory evidence.
51. As a result, I find it would be fair to “meet somewhere in the middle”. The alleged rent arrears claimed by the Landlord span from April 1, 2020 to October 29, 2020. This is just under 7 months of rent arrears. Since I found the Landlord slightly more credible and since I found slightly more fault on the Tenant, the split will be 4 months rent given to the Landlord, and 3 months saved or discounted off the claim for the Tenant. This coincides with the July 21, 2020 text to Marvin and the Landlord’s inspection of July 22, 2020. The Landlord is entitled to rent for the months of April, May, June, and July 2020.
52. The Tenant shall receive a discount off the total rent arrears claimed by the Landlord, for the months of August, September, and up to October 29, 2020. Since the Landlord is holding a rent deposit of \$2,100.00, that deposit and any interest owing on it shall be applied to the month of July 2020. The termination date and vacate date will be deemed to be July 31, 2020 (which falls at the end of a rental period). Interest on the rent deposit shall be deemed to be owing from the date of collection up to July 31, 2020.
53. The Tenant alleged a key fob deposit of \$200.00 should be credited. I did not receive any proof from the Tenant that the deposit had been paid to the Landlord. While the Tenant claimed he had initially paid the Landlord \$4000.00 at the start of the tenancy (comprised of \$2,100.00 first month’s rent, plus \$2,100.00 last month’s rent deposit, plus \$600.00 furniture deposit, plus \$200.00 key deposit, less \$1000.00 for buying a sofa on behalf of the Landlord), there was no proof provided that the key deposit was actually paid. The Tenant said the Landlord did not provide him with a receipt; however, the Tenant also did not provide any bank draft, email transfer, etc. to show he had actually paid it. There were no submissions he had paid in cash. Even if he had said they payment was made in a form that he could not provide proof, I would have weighed that in light of the credibility problems described above.

54. The Landlord disputed she ever received the key deposit. She submitted that her agent had to email the Tenant to remind him the deposit remained outstanding. Since I did not have concrete proof from the Tenant that the key fob deposit was paid, \$200.00 will not be credited from the total amount owing.

It is ordered that:

1. The tenancy is terminated as of July 31, 2020, the date the Tenant was deemed to give vacant possession back to the Landlord.

Refer to Schedule 1: Summary of Calculations

2. The Tenant shall pay to the Landlord **\$6,849.56***, which represents the amount of rent owing and compensation up to the deemed termination/vacate date of July 31, 2020, less the rent deposit and the interest the Landlord owes on the rent deposit.
3. The Tenant shall also pay the Landlord **\$190.00** to reimburse for the cost of the L9 application filing fee. While the Landlord was not entirely successful in recovering the full period of rent arrears that she claimed, I found she was owed the majority (4 months) of it. The filing of the L9 application and this Board hearing were necessary to obtain this order; thus she will be awarded the cost of the filing fee.
4. If the Tenant does not pay the Landlord the full amount owing of **\$7,039.56**** on or before January 25, 2022 (standard 11 days from the issuance date of this order), the Tenant will start to owe interest. This will be simple interest calculated from January 26, 2022 at 2.00% annually on the balance outstanding.

January 14, 2022

Date Issued



Michelle Tan

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.

**Schedule 1
SUMMARY OF CALCULATIONS**

File Number: TSL-15740-20

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

Reasons for amount owing	Period	Amount
Rent Arrears:	April 1, 2020 to July 31, 2020 (from the start of the period claimed in the L9 application, up to the deemed termination/vacate date)	\$9,160.00
Less the rent deposit:		-\$2,100.00
Less the interest owing on the rent deposit:	December 14, 2014 to July 31, 2020 (from the date of collection, up to the deemed termination/vacate date)	-\$210.44

Amount owing to the Landlord on the order date:(total of previous boxes)	\$6,849.56*
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Additional costs the Tenant must pay to the Landlord: (application filing fee)	\$190.00
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Total amount the Tenant must pay the Landlord as the tenancy is terminated:	\$7,039.56**
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