



Order under Section 69
Residential Tenancies Act, 2006

File Number: TNL-28095-20

In the matter of: 112, 155 ANTIBES DRIVE
TORONTO ON M2R3G7

Between: 155 Antibes Drive Apartments

Landlord

and

Danny E Campoverde
Virginia Limas

Tenants

155 Antibes Drive Apartments (the 'Landlord') applied for an order to terminate the tenancy and evict Virginia Limas and Danny E Campoverde (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by telephone/video-conference on April 26, 2021. The Landlord's Legal Representative, David Ciabotaru, attended the hearing. The Tenant Danny E. Campoverde attended the hearing. The Tenant Virginia Limas was not present at the hearing although Mr. Campoverde advised she is his wife and he is attending for both of them as she was working during the hearing. He was offered the opportunity to speak with tenant duty counsel before the hearing.

Determinations:

1. The Tenants have not paid the total rent the Tenants were required to pay for the period from March 1, 2019 to April 30, 2021. Because of the arrears, the Landlord served a Notice of Termination with effective termination date September 4, 2020.
2. The Landlord collected a rent deposit of \$1,464.13 from the Tenants on June 1, 2017 and this deposit is still being held by the Landlord.
3. Interest on the rent deposit was last paid out to the Tenants up to the period ending December 31, 2019. Interest is owing to the Tenants for the period from January 1, 2020 to the termination date in the Notice of Termination, September 4, 2020.
4. The Tenants paid \$4,392.42 after the application was filed.

Notice of Hearing Properly Given

5. As a preliminary issue, the Tenant advised he did not receive proper notice of this hearing by the Board and that he only learned about the hearing when he received the other side's correspondence a few days before the hearing. After a review of the Board's records it shows the Notice of Hearing package was emailed to him on March 30, 2021 at 10:35pm. The Landlord's Legal Representative emailed by carbon copy the L1 L9 Information Update Sheet to the Tenant on April 20, 2021 at 11:54am. I note the same email address where the Tenants were sent the correspondence mentioned above, is the same email address from which I received submissions and attachments from the Tenant during this hearing. Further, the email from the Landlord's Legal Representative on April 20, 2021 did not contain any hearing information, only the attachment of the L1 L9 Information Update Sheet. Considering that Mr. Campoverde knew the hearing date, VC line, dial-in number, PIN, and called into the hearing on time, I am satisfied on a balance of probabilities that he received proper notice of this hearing.

L1 Application Amended to L9 Application due to Vacate

6. The Tenant submitted that the L1 application should be dismissed since the N4 Notice is invalid because it claims improper rent. This point became moot as the Tenants vacated prior to the hearing, rendering this an L9 application only seeking alleged rent arrears and no eviction.

Monthly Rent is \$1,464.13

7. There was dispute between the parties about the amount of monthly rent. The Landlord claimed the rent was \$1,538.21 per month during the entire period covered in this application. I asked about the "rent charged" amount in line 1 which was listed as \$24,214.16 on both the N4 Notice of Termination and in the L1 Application. The time period claimed spans 16 months between March 1, 2019 to June 30, 2020. The amount charged does not mathematically compute if the monthly rent was supposed to be consistently \$1,538.21 during this time. As a result, I asked whether there had been any increase in rent during the period claimed in this application but was advised the Landlord consistently charged \$1,538.21. No documentary evidence other than the forms used for this application and *viva voce* testimony was submitted by the Landlord for my consideration on this issue.
8. The Tenant disputed the monthly rent amount and submitted that rent was always supposed to be \$1,464.13. A review of the "rent paid" amounts in the N4 Notice of Termination, L1 Application, and L1 L9 Information Update Sheet reveal that \$1,464.13 was indeed paid (albeit late at times) for each month claimed, with the exception of the final 3 months claimed (December 2020 to February 2021).
9. The Tenant submitted an Order dated October 23, 2018, amended October 29, 2018 in Board file # TNT-07533-18, which directed rent to remain at the rate of \$1,438.25 until a notice of rent increase is served. No submissions were made by the Landlord's side with respect to any order on the tenant application or any other of the numerous related files affecting this rental unit.

10. The Tenant submitted that he did have an N1 in his possession but argued that it was not properly served within 90 days of the increase taking effect. As per Rule 19.3, the Tenant was directed to send me a copy of the N1 for my consideration during the hearing, which he did. Upon review of the N1 sent to me, the date of the applicable rent increase to \$1,538.21 is indicated as starting March 1, 2020. The Tenant requested a copy of the Certificate of Service of this N1, which the Landlord's Legal Representative was provided the opportunity to provide by end of day (per Rule 19.3), although he indicated instructions would need to be sought from the Landlord. I did not receive any email attaching any Certificate of Service. Even without proof of proper service, it would seem safe to assume that if the starting date claimed in the N1 is for March 1, 2020, that the Landlord was presumably charging less monthly rent during the time before March 1, 2020. This contradicts the Landlord's submissions that the rent always remained consistent during the entire period claimed within this application.
11. The Landlord's Legal Representative submitted that the Landlord was unprepared to speak to any notice of rent increase issue raised by the Tenants during the hearing as they were "ambushed" or otherwise not properly disclosed at least 5 days before the hearing. To counter this, I provided the opportunity for any evidence the Landlord wanted me to consider to be submitted by email before end of hearing day. I did not receive any further evidence, documents or submissions from the Landlord or the Landlord's Legal Representative. The onus is on the applicant making the rent arrears claim, to establish what the monthly rent is and what the arrears are calculated to be, during the time period claimed within their application.
12. There was some discussion about an L5 AGI (above guideline increase) application. The Landlord's Legal Representative provided as background that the Board had granted an AGI dated in or around February, 2020, for which the Tenants were given notice approximately two years before in early 2018. No file number or evidence were submitted to me with respect to the AGI, nor any submission that the approved increased rent amount was ordered to be applied retroactively (as is not uncommon in Board AGI decisions) as far back as March, 2019 (the first month claimed in the N4 Notice).
13. The Landlord's side also argued that as per section 135(1) of the Act, even without a valid notice of rent increase, the rate is deemed to be valid if it is paid for at least a year without an appeal of the amount. Since there was no evidence before me that the Tenants ever paid any increased rent, let alone for 12 months, I do not find this point relevant.
14. Considering all of the evidence before me, I find on a balance of probabilities, that the monthly rent is \$1,464.13. There was discrepancy to the mathematical calculations of the rent claimed during the period listed in the N4 Notice and in the L1 Application. There was an N1 notice which whether served validly or not, would imply the alleged rate of \$1,538.21 was only supposed to apply starting March 1, 2020 at the earliest, if at all. There was no order or file number for me to consider with respect to any AGI application that would allow any retroactive application of an increased rent amount. Finally, the order submitted by the Tenant in the related tenant application states rent shall remain at \$1,464.13, and no evidence was submitted by the Landlord's side to indicate to the contrary.

15. These are all my reasons and no further reasons shall be given.

It is ordered that:

1. The tenancy is terminated as of February 23, 2021, the date the Tenants gave vacant possession of the rental unit to the Landlord.
2. The Tenants shall pay to the Landlord **\$2,594.22***, which represents the amount of rent owing and compensation prorated up to the vacate date February 23, 2021, less the rent deposit and interest the Landlord owes on the rent deposit.
3. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. If the Tenants do not pay the Landlord the full amount owing of **\$2,780.22**** on or before June 18, 2021 (standard 11 days after the order issuance date), the Tenants will start to owe interest. This will be simple interest calculated from June 19, 2021 at 2.00% annually on the balance outstanding.

June 7, 2021
Date Issued

Michelle Tan
Member, Landlord and Tenant Board

Toronto North-RO
47 Sheppard Avenue East, Suite 700, 7th Floor
Toronto ON M2N5X5

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: TNL-28095-20

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

Reasons for amount owing	Period	Amount
Arrears: (from the start of the period claimed in the Notice of Termination, up to the termination date in the Notice of Termination)	March 1, 2019 to September 4, 2020 (only 4 days in September were unpaid at the time the L1 application was filed on September 11, 2020, since the monthly rent is determined to be \$1464.13 instead of \$1,538.21 during this period)	\$192.56
Plus compensation: (from the day after the termination date in the Notice of Termination, up to the vacate date) (\$1,464.13 × 12) ÷ 365 = \$48.14 daily rate	September 5, 2020 to February 23, 2021 (172 days)	\$8,280.08
Less the amount paid by the Tenants: (after the application filing date)		-\$4,392.42
Less the rent deposit:		-\$1,464.13
Less the interest owing on the rent deposit:	January 1, 2020 to September 4, 2020	-\$21.87
Amount owing to the Landlord on the order date: (total of previous boxes)		\$2,594.22*
Additional costs the Tenants must pay to the Landlord (application filing fee):		\$186.00
Total the Tenants must pay the Landlord as the tenancy is terminated:		\$2,780.22**

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