



Order under Section 69
Residential Tenancies Act, 2006

File Number: TEL-13076-20

In the matter of: 100 ORTON PARK ROAD
SCARBOROUGH ON M1G3G8

Between: Cher Alicia Baccus Landlord

and

Derek Nizam Baccus Tenant

Cher Alicia Baccus (the 'Landlord') applied for an order to terminate the tenancy and evict Derek Nizam Baccus (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on April 21, 2021. The Landlord and the Tenant attended the hearing. The Landlord was represented by Chris Randall. The Tenant was represented by Duty Counsel, Jacky Chiu.

Adjournment request:

1. At the outset of the hearing Duty Counsel on behalf of the Tenant requested that the hearing be adjourned. He argued that this application involved complex issues of law, specifically, trust law, and the Tenant required legal assistance to properly prepare for the hearing.
2. The Landlord opposed the adjournment request. She argued that this matter has been going on for years and the Tenant has neglected to seek legal advice. The issue of whether the Act applies was resolved by an Order dated December 31, 2019 after a hearing was held on July 10, 2019. The Landlord argued that the Tenant has been aware of the scope of the issues in this proceeding since then and has had ample opportunity to seek legal advice and assistance. The Landlord also argued that this matter was urgent as she was in a difficult financial position herself with her only income being CERB.
3. When questioned about what steps, if any, the Tenant took to obtain legal advice, the Tenant simply stated that he had no reason to do so as the rental unit was his. He argued that he paid cash for it and didn't need to seek legal advice to stay in his own house.
4. I denied the Tenant's request to adjourn. The Tenant was represented by Duty Counsel and took no steps to seek legal advice prior to the hearing. Based on the procedural history and on the Tenant's testimony, I am not satisfied that he would take any steps

towards seeking legal advice if the hearing was adjourned. As such, it did not appear that an adjournment was necessary to ensure a fair hearing for the Tenant.

Determinations and Reasons:

1. For the reasons set out below, I do not find that the Landlord has established that the lawful rent for this property is \$1,000.00. The N4 Notice to End your Tenancy For Non-Payment of Rent (N4 Notice) served by the Landlord on September 23, 2020 does not correctly set out the amount of arrears of rent owing as required by subsection 59(2) of the *Residential Tenancies Act, 2006* (“Act”) which states:

The notice of termination shall set out the amount of rent due and shall specify that the tenant may avoid the termination of the tenancy by paying, on or before the termination date specified in the notice, the rent due as set out in the notice and any additional rent that has become due under the tenancy agreement as at the date of payment by the tenant.

2. As a result, the L1 application which was based on the N4 Notice must be dismissed.
3. The Landlord testified that the monthly rent for the unit was \$1,000.00 a month. The Landlord did not provide any evidence that parties ever agreed to a monthly rent of \$1,000 a month. She testified that no lease was ever signed but that she advised the Tenant that the monthly rent became \$1,000.00 a month through her counsel. The Landlord submitted a letter dated September 23, 2020 sent to the Tenant advising him that rent of \$1,000.00 a month was owing for every month starting September 1, 2018. The Landlord conceded that the Tenant never agreed to or acknowledged that monthly rent was \$1,000.00 a month but testified that the Tenant never specifically told the Landlord that rent was not \$1,000.00 a month either.
4. The Tenant denied that he ever agreed to pay any rent to the Landlord. While I am not inclined to give much weight to the Tenant’s testimony because he was argumentative and evasive, this evidence is not inconsistent with that presented by the Landlord. The Landlord’s own evidence was that she believed she was owed “rent” starting September 1, 2018 not because the parties agreed to rent of \$1,000.00 a month but because the Tenant failed to make the payments he undertook to make, which would total over a \$1,000.00.
5. In light of the evidence provided by the parties I am unable to find that the Landlord has established that there was ever a meeting of the minds that the Tenant would pay rent to the Landlord. The consideration for residing at the rental unit agreed upon by the parties appears to have been limited to payment of expenses. These expenses were not supposed to be payable to the Landlord. The Landlord was not entitled to unilaterally change the agreement to start charging \$1,000.00 a month in rent.
6. In the event that I am wrong about the nature of the parties’ agreement, and they agreed that the Tenant will pay rent to the Landlord, I do not find that the Landlord has established that the amount of monthly rent is \$1,000.00.

7. The Landlord argued that rent was \$1,000.00 a month because the expenses associated with the house added up to \$1,000.00 to \$1,500.00 a month. The Landlord testified that her initial agreement with the Tenant was that he would take care of maintenance and expenses and pay all of the bills directly. After she received notice that many of the bills were past due, however, she switched the accounts into her name, and after September 1, 2018 she has been trying to get the Tenant to reimburse her for the expenses she has had to incur.
8. The Landlord testified about the following bills she recently paid for the rental unit:
 - a. \$257 for utilities for the period of August 16 to December 13, 2020;
 - b. \$336 for Enbridge for the period of February 18 to March 15, 2021;
 - c. \$143 being the interest only payment for the secured Line of Credit registered against the property;
 - d. \$522 being 1/6th of the total property tax bill; and
 - e. Unknown amount for Hydro. She testified that she couldn't find the exact amount she paid because she fell behind and has not paid this Bill recently.

This totals approximately \$800 a month not including Hydro.

9. The Tenant testified that he paid Hydro himself and demonstrated the recent Hydro Bill by bringing it up to his camera. This evidence was not seriously challenged by the Landlord. Given the Tenant's testimony and as the Landlord was unable to provide the amount of the Hydro bill payment, I do not find that the Landlord proved on the balance of probabilities that she has been paying Hydro herself.
10. The Landlord bears the burden of proof in this application. I do not find that the Landlord met her burden of proof in establishing on the balance of probabilities that the monthly rent was \$1,000.00.
11. The expenses the Landlord testified about did not add up to a \$1,000.00 a month. It is clear, therefore, that even based on the Landlord's own evidence the monthly rent is less than \$1,000.00 a month.
12. While this is not determinative in this application, I also note that unpaid utilities are generally not considered to be arrears of rent. Under the Residential Tenancies Act, 2006 (Act), rent can only be increased once every 12 months after a landlord has given a tenant a written notice of rent increase once every month. Utility costs generally fluctuate based upon usage and changes, but the lawful rent for a rental unit cannot change each month accordingly. The Landlord and Tenant Board Interpretation Guideline 11: Eviction for Failure to Pay Rent, provides as follows:

The landlord cannot include amounts for which the tenant fails to reimburse the landlord for the utility charge in an application for the payment of rent arrears or in an application for termination of the tenancy and eviction of the tenant based on the tenant's failure to pay the utility charge.

13. As such, even if the expenses paid by the Landlord above added up to a \$1,000.00, the N4 Notice would fail to correctly set out the arrears of rent owing.
14. For the reasons above, I do not find that the Landlord proved on the balance of probabilities that the lawful monthly rent for this rental unit is \$1,000.00. The N4 Notice does not correctly set out the arrears of rent owing because it incorrectly claims that rent is \$1,000.00 a month. The amount of arrears of rent owing is inaccurate, and therefore the N4 Notice is invalid. As the N4 Notice is invalid, the Landlord's application for termination of the tenancy must be dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

June 16, 2021
Date Issued



Vladimir Nikitin
Member, Landlord and Tenant Board

Toronto East-RO
2275 Midland Avenue, Unit 2
Toronto ON M1P3E7

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.