



**Order under Section 57
Residential Tenancies Act, 2006**

Citation: MICHALARIAS v NWEKE GROUP INC, 2024 ONLTB 16492

Date: 2024-03-13

File Number: LTB-T-060355-22

In the matter of: 2, 615 EGLINTON AVENUE TORONTO
ON M5N1C5

Between: FOTIS MICHALARIAS Tenant

And

NWEKE GROUP INC Landlord

FOTIS MICHALARIAS (the 'Tenant') applied for an order determining that NWEKE GROUP INC (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on January 22, 2024.

The Tenant, the Landlord's Property Manager, Jamille Sunga (J.S.) and the owner of Nweke Group Inc, Happiness Nweke, attended the hearing.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord shall pay to the Tenant \$3,257.68 which represents:
 - \$3,204.68 for the remaining compensation owed to the Tenant.
 - \$53.00 for the cost of filing the application.

Preliminary Issue

2. The Tenant's application relates to an allegation that the Landlord did not pay the compensation required pursuant to section 52(1) of the *Residential Tenancies Act, 2006*

(the 'Act'). In these circumstances, the Tenant was required to file a T1 application for a rebate.

3. The Tenant confirmed there is no allegation of bad faith on the part of the Landlord for serving the notice of termination and that they mistakenly filed the wrong application type. The Tenant requests that this application be amended to a T1 application.
4. The Landlord consented to the Tenant's request. The Landlord stated they had no issue with properly understanding the allegations of the Tenant and were able to prepare accordingly.
5. As such, the Tenant's request is granted and the application is amended to a T1: Tenant Application for a Rebate.

Evidence and Analysis

6. The Tenant testified that on April 27, 2022, the Landlord served him with a N13 notice with a termination date of August 31, 2022. The N13 notice stated the rental unit was being converted to non-residential use. The Tenant testified that included with the notice of termination was a note from the Landlord which stated:

“As for the compensation, 615 Eglinton and 617 Eglinton are two separate buildings. The are deeded separately, taxed separately and metered separately. Each building has fewer than 5 units therefore you are entitled to 1 month. The amount will be sent to you by e-transfer as requested on the termination date.
7. The Tenant testified that he was supplied with one month compensation in the amount of \$1,602.34.
8. The Tenant disagrees with the Landlord's assessment of the buildings being separate. The Tenant testified that he believes he is entitled to an additional 2 months compensation because the residential complex contains more than 5 units collectively.
9. The Tenant provided the following testimony and evidence to support his position:
 - Photos showing 615 and 617 Eglinton Avenue West are attached buildings, sharing a wall with no path or separation between the buildings.
 - The Tenant testified that the Property Manager handles all matters concerning both buildings. The Tenant testified that as an example of this, he made noise complaints relating to the shared building 617 Eglinton to J.S.
 - The Tenant testified that access to the rooftop for all the air conditioning units for both 615 and 617 Eglinton are though 617 Eglinton only.

- The Tenant testified that there are shared garbage bins for both buildings and that specific bins were never identified to the Tenants showing they were for one or the other building specifically.
 - Photo of a shared mailbox used for 615 and 617 Eglinton Avenue where tenants were to place their rent cheques.
 - Photo of signage in front of the complex which shows both 615 and 617 Eglinton Ave W as a rental property owned and managed by Nweke Group.
10. J.S. testified on behalf of the Landlord. J.S. testified that the buildings of 615 and 617 Eglinton are titled and deeded separately. J.S. testified that the Landlord's company purchased the buildings separately from two separate individuals. J.S. testified that 615 Eglinton was purchased in March of 2002 and that 617 was later purchased in May of 2002.
11. J.S. testified that there are 3 rental units in 615 Eglinton and there are also 3 rental units in 617 Eglinton. J.S. testified that she is the employee of the Landlord and her role is to manage the rental units in both buildings.
12. To support their position that the buildings are separate and are two different municipal addresses the J.S. provided the following testimony and evidence:
- Ontario Land Title Registry for 615 Eglinton showing the following information:

615 Eglinton Ave West, Toronto ON M5N1C5 Registry
No: 21175-0042 (LT)
Property Description: PT LT 1 PL 2350 Toronto PT 1 64R15523
Transferred to Wilson Nweke on Mar 27, 2002
Transferred to Nweke.com Inc. on Dec 27, 2018 Mortgage
Bank: First Marathon Mortgage Corp
 - Ontario Land Title Registry for 617 Eglinton showing the following information:

617 Eglinton Ave West, Toronto ON M5N1C5 Registry
No: 21175-0041 (LT)
Property Description: PT LT 1 PL 2350 Toronto PT 2 64R15523 Transferred
to Nweke.com Inc. on May 5, 2002
Mortgage Bank: Laurentian Bank of Canada
 - Toronto Property Tax Bill for 615 Eglinton and a separate Toronto Property Tax Bill for 617 Eglinton.
 - Separate Toronto water & solid waste management utility bills for 615 and 617 Eglinton showing different account numbers for each building.

13. J.S. testified that there is only one access to the rooftop and stated that it was unnecessary to create a separate access because each building was owned by the same company. J.S. testified that had the other side of 615 Eglinton been owned by someone else, the Landlord would have installed separate access to the roof top; however, that was an unnecessary expense in the circumstances.
14. J.S. further testified that the reason there was no separate garbage area and bins at the back of the building was because the back lot was very tight on space and it was not a practical use of space to supply separate bins for each building.
15. Section 52(1) of the *Act* states the following:

A Landlord shall compensate a tenant in an amount equal to three months rent or offer the tenant another rental unit acceptable to the tenant if,

- a) the tenant receives notice of termination of the tenancy for the purposes of demolition or conversion to a non-residential use;
- b) the residential complex in which the rental unit is located contains at least five residential units; and
- c) in the case of a demolition, it was not ordered to be carried out under the authority of any other Act.

[underlining added]

16. Section 2(1) of the *Act* defines “residential complex” and states:

Residential Complex, except in Part V.1 means,

- a) A building or related group of buildings in which one or more rental units are located.
 - b) A mobile home park or land lease community,
 - c) A site that is a rental unit
 - d) A care home, and,
- Includes all common areas and services and facilities available for the use of its residents.

[underlining added]

17. In this case, I find that the buildings of 615 and 617 were a “residential complex” as contemplated by the *Act*. I say this because the Landlord owns both buildings and the buildings share a joining wall. From the photos supplied of the back parking lot of the buildings, it appears that both buildings share the same parking lot and as such, it is a common area. Additionally, the Landlord’s evidence supports that the back lot was a tight space and as such only one set of garbage bins were supplied to both buildings; therefore the garbage is also a shared facility. The Tenants were to report issues to the same property manager and were also required to drop their rent cheques in a communal mail

box for both buildings. Finally, only one access was available to the air conditions on the shared roof which provided cooling to all 6 units of both buildings.

18. The residential complex contains 6 units total. Therefore, as per section 52(1) of the *Act* the Tenant was to be paid 3 months rent as compensation for the N13. Since the Tenant was only paid one month's rent the Tenant is owed the remaining two months rent as compensation.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$3,257.68. This amount represents:
 - \$3,204.68 for the remaining compensation required.
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by April 30, 2024 .
3. If the Landlord does not pay the Tenant the full amount owing by April 30, 2024, the Landlord will owe interest. This will be simple interest calculated from May 1, 2024 at 7.00% annually on the balance outstanding.
4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

March 27, 2024

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Melissa Anjema

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.