



Order under Section 69 Residential Tenancies Act, 2006

Citation: Kuan v Ferguson, 2024 ONLTB 60653

Date: 2024-08-16

File Number: LTB-L-021439-24

In the matter of: B, 75 BRADSHAW ST
BOWMANVILLE ON L1C2H4

Between: Fong Fan Kuan Landlord

And

Adam Ferguson Tenant

Fong Fan Kuan (the 'Landlord') applied for an order to terminate the tenancy and evict Adam Ferguson (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on July 31, 2024.

The Landlord and the Tenant attended the hearing. The Landlord was assisted by a family member, Hang Fan (Shelley) Kuan.

Determinations:

1. The Landlord served the Tenant with an invalid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). An application for eviction cannot proceed on an invalid notice. The Landlord did not want to consider any form of order other than eviction, so the application was not amended to an arrears only application.
2. The N4 notice indicates that the monthly rent is \$921.81. The Tenant disputes this, and says the legal rent is \$899.33 and they never received a notice of rent increase.
3. The Landlord says the rent increased from \$899.33 in August 2023, but acknowledges that a formal notice of rent increase was not issued to the Tenant. Instead, they rely on a series of text messages in which the Landlord attempts to increase the rent to \$1,500.00 and the Tenant refuses and provides them information about the maximum guideline increase.
4. The Tenant has never paid the increased amount of \$921.81.
5. Section 43 of the *Residential Tenancies Act, 2006* (the "Act") requires that a notice of termination set out the reasons and details respecting the termination. Similarly, in the Divisional Court's decision in *Ball v. Metro Capital Property*, [2002] O.J. No. 5931 (which was decided in the context of an N5 Notice of Termination but is routinely applied to all notices of termination), the court found that a notice of termination must contain particulars.

6. Therefore, I find that the legal rent is \$899.33 and the N4 Notice of termination lists an incorrect monthly rent.
7. Section 59(2) of the Act states that:

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.

8. I find that to satisfy the requirements of s.43(2) and 59(2) an N4 notice must correctly state the amount of rent which is due in a rental period. A notice of termination cannot be amended; the Landlord cannot correct this amount at a hearing in order to proceed with an eviction application.
9. Board Interpretation Guideline 3 on costs states that: A Member has the discretion to require a party, a party's agent or a party's legal representative to pay, as costs, any representation or preparation expenses of another party where the conduct of the party, a party's agent or a party's legal representative was unreasonable. Conduct is unreasonable if it causes undue expense or delay and includes the following:
 - Acting contemptuously toward the Member or showing a lack of respect for the process or the Board;
 - Failing to follow the directions of the Member or upsetting the orderly conduct of the hearing; and
10. Throughout the hearing the Landlord repeatedly failed to follow instructions, including limiting their answers to the specific question asked. This behaviour continued despite a warning that failing to directly answer a question would lead to a fine of \$50.00. Consequently, the Landlord is ordered to pay Board costs of \$50.00.

It is ordered that:

1. This application is dismissed.
2. The Landlord shall pay costs of \$50.00 to the Board by August 27, 2024.

August 16, 2024
Date Issued

Dawn Carr
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground 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.

Payment of the costs must be made to the LTB by the deadline set out above. The costs can be paid by certified cheque, bank draft or money order made payable to the Minister of Finance. If paying in person, the debt can also be paid by cash, credit card or debit card.