



Order under Section 69 Residential Tenancies Act, 2006

Citation: 9256-0739 Québec Inc. v Tyssira, 2024 ONLTB 61087

Date: 2024-08-21

File Number: LTB-L-089486-23

In the matter of: 5 STEPHANIE AVE
NEPEAN ON K2E7A8

Between: 9256-0739 Québec Inc. Landlord

And

Lyes Tyssira Tenant

9256-0739 Québec Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Lyes Tyssira (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 20, 2024.

The Landlord's Agent, Sayed Hassan, the Landlord's Agent Support Person, Batoul Hassan, and the Tenant attended the hearing.

Determinations:

LTB Jurisdiction

1. It is important to note that the parties have two distinct and separate tenancy agreements:
 - A residential tenancy agreement for the rental unit known as 5 Stephanie Ave, Nepean, ON K2E7A8, as it appears on a copy of the Agreement to lease (Exhibit A1)
 - A commercial tenancy agreement for the commercial unit known as 405 Boulevard de l'Hôpital, Gatineau, QC, J8T 8E2.
2. The Landlord and Tenant Board only has the jurisdiction to hear matters related to residential tenancies in Ontario. Accordingly, no determinations will be made in relation to the commercial dispute between the parties.

Validity of the N4 Notice of Termination

3. The Landlord served the Tenant with a Notice to End Tenancy Early for Non-payment of Rent (hereafter referred to as the "N4 Notice"), which reflected arrears for the rental period starting May 1, 2023, and ending October 31, 2023.
4. As per the N4 Notice, the Landlord alleges that they did not receive any rent payments during the course of the aforementioned rental period.

5. The Tenant contested the validity of the N4 Notice, indicating that they had indeed submitted periodic rent payments, but that the Landlord failed to apply the payments to the Tenant's residential account.
6. The Landlord provided a copy of his internal accounting notes, which show a breakdown of the Tenant's payment history for both his residential and commercial tenancies (hereafter referred to as the "Ledger"; Exhibit A4).
7. The Ledger shows that the Tenant made payments in the total amount of \$24,600.00, between May 1, 2023, and October 31, 2023.
8. The Tenant is of the position that the Landlord unilaterally decided to apply the payments towards the Tenant's commercial tenancy, while the Tenant's intent was to submit payments towards their residential tenancy.
9. The Tenant explained that the rent payments were submitted to the Landlord by e-transfer.
10. When asked to clarify if the e-transfer were automatically deposited, or if the Landlord was required to enter a password in order to accept the e-transfer payment, the Tenant stated that the security question was "*For Which Street*" (translation) and the password was "*stephanieavenue*", which is the street name of the residential rental unit.
11. The Tenant stated that he did not make payments towards their commercial tenancy as they were experiencing hardships with the launch of their new business venture.
12. When asked to explain how the payments were split between the residential and the commercial accounts, the Landlord stated that he did so of his own volition, with no express indication from the Tenant.
13. The Landlord did not dispute that the Tenant's payments were submitted by e-transfer, but stated that he did not recall the password that was used by the Tenant. I therefore find that the Tenant's claims in regard to the e-transfer password are not disputed.
14. On the basis of the evidence before me, I find that the Landlord unilaterally decided not to apply payments that were made by the Tenant for the intent of their residential tenancy to the Tenant's residential account. Indeed, by the Landlord's own admission, the Landlord sought no instructions or clarifications as to what the payments made by the Tenant represented. The fact that the password used by the Landlord to accept the payments was the street name of the (residential) rental unit lends credence to the Tenant's position that the entirety of the amount of \$24,600.00 paid between May 1, 2023, and October 31, 2023, was to be applied to the Tenant's residential account.
15. Accordingly, the arrears reflected on the N4 Notice served by the Landlord to the Tenant are incorrect, as they reflect that the Tenant made no payments to the Landlord between May 1, 2023, and October 31, 2023.
16. Subsection 59 (2) of the *Residential Tenancies Act*, 2006 (hereafter referred to as the 'Act') reads as follows:

59 (2) 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.

17. As explained above, the amount the Tenant was directed to pay to the Landlord on the N4 Notice was incorrect, as the N4 Notice did not take into consideration the amounts paid by the Tenant between May 1, 2023, and October 31, 2023.

18. In *George V Apartments Ltd. v. Cobb*, [2002] O.J. No. 5918 (Div. Ct.), the Court concludes that a notice of termination that does not comply with the Act's requirements is void:

[15] We find the scheme of the Act should be applied with an even hand between landlord and tenant when it comes to notices of termination. [...] **the Act recites that a tenancy may be terminated only in accordance with the Act.** [Emphasis Added]

19. As such, I find that the N4 Notice is invalid. As the Board cannot evict the Tenant based on an invalid notice of termination, the Landlord's application for an order to terminate the tenancy and evict the Tenant because the Tenant did not pay the rent that the Tenant owes, is dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

August 21, 2024
Date Issued

Alexandre Traboulsi
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.