



Order under Section 69 Residential Tenancies Act, 2006

Citation: Patel v Fotinov, 2024 ONLTB 8127

Date: 2024-02-28

File Number: LTB-L-018606-23

In the matter of: 2, 4028 County Road 43 East Kemptville
ON K0G1J0

Between: Tejas Patel Landlord

And

Vadim Fotinov Tenant

Tejas Patel (the 'Landlord') applied for an order to terminate the tenancy and evict Vadim Fotinov (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 15, 2023.

The Landlords Tejas Patel and Akash Patel and the Tenant attended the hearing. The Landlord's Legal Representative D. Loomba was also present at the hearing.

Determinations:

Unsolicited post-hearing submissions by Tenant

1. The Tenant has sent emails to the Board after the hearing concluded asserting that they have been paying rent, but the Landlords are refusing to issue rent receipts.
2. The parties are advised that the *Residential Tenancies Act, 2006* ("Act") require landlords to issue receipts when requested:

109 (1) A landlord shall provide free of charge to a tenant or former tenant, on request, a receipt for the payment of any rent, rent deposit, arrears of rent or any other amount paid to the landlord.

3. Section 9 of O.Reg 516/06 under the Act states:

9. A document constitutes a receipt for the purposes of section 109 of the Act if it includes, at a minimum,

- (a) the address of the rental unit to which the receipt applies;
- (b) the name of the tenants to whom the receipt applies;

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(c) the amount and date for each payment received for any rent, rent deposit, arrears of rent, or any other amount paid to the landlord and shall specify what the payment was for;

(d) the name of the landlord of the rental unit; and

(e) the signature of the landlord or the landlord's authorized agent.

Preliminary Issues raised at the hearing

- 4. The Tenant raised two issues at the hearing about the corporate Landlord uploading evidence for this application and also that the Landlord's Legal Representative served evidence via email which is not as per Board Rule 3.3.
- 5. He also submitted that when the application was filed on March 16, 2023, the Landlord did not attach a Certificate of Service or N4 which is against the LTB Rules of Procedure 4.4 and 4.5. A copy of the N4 notice and the Certificate of Service was uploaded to the TOP on November 09, 2023 a week before the hearing date.
- 6. The Tenant referred to a letter he wrote to the Board in relation to serving of evidence for different files at the LTB for the same parties and have no co-relation to the matter in this application.
- 7. The Landlord's Legal Representative explained that the property had two components – one a hotel owned by a corporation and then the residential part which is owned individually. With respect to service of the Landlord's evidence, he served the Tenant via email and via mail. Since the Tenant was corresponding on email with him, he believed that would be the best method of service. A copy of the email from January 27, 2023 was submitted which clearly states that a copy has been sent by mail too.
- 8. I am satisfied that the Tenant was served with the Landlord's evidence in accordance with Board's Rules of Procedure.
- 9. While the Landlord's application should have been accompanied by the N4 notice of termination and Certificate of Service when filed, I do not find that the error is fatal or caused the Tenant prejudice since the Tenant was served with a N4 and the Tenant has the same in his own evidence package as an exhibit.

10. The Tenant also submitted that the Landlord's Legal Representative sent him additional evidence by email yesterday. As this evidence was not provided to the Tenant at least 7 days before the hearing as required by LTB Rule of Procedure 19.1, I made a ruling that it would not be accepted into evidence.

L1 Application- Non-payment of rent

11. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.

12. As of the hearing date, the Tenant was still in possession of the rental unit.

13. The lawful rent is \$226.00. It is due on the Thursday of each week.

14. Based on the Weekly rent, the daily rent/compensation is \$32.20. This amount is calculated as follows: \$226.00 x 52, divided by 365 days.

15. The Tenant has paid \$2,569.40 since the application was filed.

16. The rent arrears owing to November 15, 2023 are \$28,409.60.

17. There is no last month's rent deposit.

Section 82 issues

18. The Tenant raised the following section 82 issues:

a) Eviction by fraudulent means that violate section 2.1 of the Human Rights Code and multiple sections of the *Residential Tenancies Act, 2006* (the "Act")

19. Background facts:

a) The residential complex consists of two components – one hotel which is owned by a corporation and the second part is a residential complex consisting of five townhouses that are owned by the Landlords Tejas and Akash Patel.

b) The Tenant has lived there since 2014 and the rent is \$226.00 weekly which he pays via cash at the front desk of the hotel.

c) The Landlords purchased the property in July 2018 from the previous Landlord.

d) An N13 was served to the Tenant in 2021 and the problems began after the service of the N13. The Landlords stopped accepting rent payments from the Tenant after the N13 was served and then the problems accelerated as they refused to give a reason to refuse rent payments.

- e) The other four units are empty waiting for the Landlord to convert them to nonresidential use as the hotel franchisor has asked to convert that part to the hotel as well.
- f) An order EAT-96345-21-RV was issued on October 11, 2022, wherein the member determined based on the Tenant's T2 application that serving the Tenant a N4 notice does not constitute harassment and dismissed the application.

Tenant's evidence:

- 20. The Tenant testified that he does not owe anything to the Landlord. He stated that the issue started on April 1, 2021, when the Landlord stopped accepting rent from the Tenant. This application is due to non-acceptance of rent by Landlord by fraudulent means and repeated refusal of accepting rent.
- 21. The Tenant raised the Landlord's refusal to accept rent in his own T2 application filed on April 25, 2021 (EAT-96345-21) The Tenant's application was originally dismissed on March 22, 2022 as abandoned because the Tenant did not attend the hearing. The Tenant feels it was the Landlord's fault that he did not attend the original hearing because the Tenant did not receive his mail in time. On October 6, 2022, a hearing was held to consider the Tenant's request to review order EAT-96345-21. The Member did not find merit in the Tenant's application, and it was dismissed.
- 22. He believes that the Landlord has chosen to go down this deceitful way to evict him which is against the Human Rights Code. The Tenant did reach out to the Landlord after the T2 application was filed in April 2021, by writing two letters to the Landlords dated May 6 and May 20, 2021. The Tenant filed another T2 application on November 5, 2022 LTB-T065372-22 which is yet to be scheduled by the Board.
- 23. The Tenant testified that he was served with an N13 notice by the Landlord on or around November 30, 2020, with a date of termination March 31, 2021. The Tenant wrote a letter to the Landlord asking to give him an alternate accommodation otherwise he does not plan to move due to the COVID-19 pandemic. The Landlord never responded to his request, so the Tenant did not make any efforts to find an alternate accommodation or speak to the Landlords again.
- 24. On April 1, 2021, after the N13 termination date of March 31, 2021, the Tenant went to the hotel reception as always to pay his weekly rent. The Landlords/ Landlord's Agent refused to accept the same and one of the Landlord Akash Patel told him that they did not want him there. The refusal to accept rent without cause repeated the following week and finally on probing further, the Tenant was told that they are not accepting rent since he has been served with a N13 notice. A note signed by a staff member dated April 8, 2021, was tendered which stated the reason for non-acceptance of rent as the N13 notice. The Tenant testified that he continued to go every week, but the rent was not accepted.

25. The Tenant wrote a letter to the mayor of Kemptville on April 5, 2021 and April 8, 2021, about the mistreatment by the Landlords.
26. The Tenant wrote to the Landlord again on April 15, 2021 asking them to stop the discriminatory practises and accept the rent payments. There was no response from the Landlords. The Landlord did state that he will issue a letter with the reasons for not accepting rent payments, but none was ever received by the Tenant.
27. In July 2021 the Landlord served the Tenant with this fraudulent N4 to evict him when they were not accepting rent. After that the Tenant did not go to the office to pay rent. There has been a total of 17 contacts between the parties which includes serving notices and evidence for various Tribunal dates.
28. The Tenant has written numerous letters to various agencies in and around the city, the Premier of Ontario and the Prime Minister's office to make legislative changes to the *Residential Tenancies Act, 2006* (the "Act") to include non-acceptance of rent to s.233. The copies of all these letters were tendered as exhibits. The letters assert that the Landlords were trying to evict the Tenant by fraudulent means, and it must be prohibited, and action taken against them.
29. The Landlords have filed multiple L1 applications with the Board. The first two were dismissed by the Board due to defective notices. The Tenant believes that the Landlords have violated S.22, 23, 233, 233(1), 234, 235 and 236 and he has also requested the OPP initiate a criminal investigation against the Landlords.
30. The Tenant also asserted that a previous application filed by the Landlords had forged signatures and the Landlord should be penalised for the same under s.234. He also testified that the Landlord treated the Tenant differently from other tenants from whom they accepted rent readily whereas he was not allowed to pay rent.
31. The Tenant was ordered by the Board on September 5, 2023, via a Member endorsement to start paying his rent. He testified that since September 2023 he has been paying his rent regularly. On being questioned, he stated that he does not believe he owes the Landlords any rent since they refused to accept rent and he does not have the money saved up to pay the large rent arrears being claimed now. He should not have to pay any money to the Landlords at all.
32. The Tenant stated that he requested the Board issue an order requiring the Landlord to start accepting rent payments from him which the Board did not until the September 5, 2023 direction. Therefore, the Tenant did not make any attempts to pay rent after the initial months since he was waiting on an order from the LTB. The first rent payment that was made after April 1, 2021 was on September 7, 2023.

Landlord's evidence:

33. The Landlord Tejas Patel (TP) testified that he was misinformed that once the Landlord serves a N13, he cannot accept rent as has to pay the Tenant compensation, so he

stopped accepting rent from the Tenant. When his representative advised him correctly, they served the Tenant with a N4 notice in July 2021 which was their way of saying that the Tenant should start paying rent but the Tenant stopped paying rent all together. There was no other direct or indirect communication from the Landlords asking the Tenant to pay rent.

34. The Landlords have never asked the Tenant for rent personally, they have never obstructed the Tenant's use of the residential complex and have been paying out of pocket for Tenant's utilities which are included in the rent. He also added that all other tenants in the residential complex have vacated the units except this one tenant and they are at a financial loss as the hotel franchisor is asking to convert these residential units to be a part of the hotel.
35. He also added that the receipt of rent is given on the hotel receipt book because the staff accepts rent payments and they do not want the staff to pocket the money. While the residential complex where the Tenant resides is individually owned the hotel is also a part of their portfolio. He has instructed staff to give all the residential tenants receipts of rent received.

Analysis and the Law

36. The Tenant alleges that the Landlords are violating his Human rights Code by not accepting his rent payments and then creating a fraudulent case stating he is not paying rent.
37. Given the evidence before me, I can easily find that the Landlords improperly refused to accept rent from the Tenant on April 1, 2021 and on several following weeks. Even though the Landlords did not give the reasons in writing, the Tenant did document his weekly refusals by the Landlords. In my view, I find it more likely than not that the Landlords did not accept the Tenant's April, May and June rent payments, which then was followed by the Landlords serving a N4 in July 2021 and then filing their L1 application on March 16, 2023.
38. It is entirely inconsistent with the Act for a landlord to refuse to accept rent from a tenant and then attempt to evict the tenant for failing to pay the rent. Simply put, how can a Landlord refuse to accept rent from as Tenant and then seek to evict a Tenant for not paying rent?
39. The Landlord testified that he was unaware of his obligations under the Act which I do not find convincing. Being ignorant does not absolve the Landlord's of their rights and responsibilities.
40. The Landlords' Legal Representative stated that the Landlords serving the N4 clearly showed to the Tenant that they wanted to rectify their mistake of not accepting rent before, but the Tenant did not pay rent to them after the N4 was served. I do not agree that service of the N4 alone was sufficient to make it clear to the Tenant that the Landlord was reversing it past practice of refusing rent and was not demanding that the rent be paid,

including rent that the Tenant had previously attempted to pay but had not been accepted by the Landlord. The Landlord should have clearly and expressly communicated to the Tenant their new position on the issue of rent payments.

41. However, I also find that the Tenant did not behave entirely reasonably either.
42. The Tenant chose not to pay rent after he was served the N4 notice in July 2021. The Tenant may contest the non-acceptance of rent before the N4 was served but he failed to give me any reasonable explanation as to why he did not start to pay rent until he received a Board direction to start paying rent on September 5, 2023. I do not find the Tenant's argument reasonable that he was waiting on the Board to grant the same on his T2 application and because his application was dismissed, he did not need to start paying rent.
43. The Tenant also raised the Human rights code issues in respect. Subsection 2(1) of the Code provides that everyone has the right to equal treatment with respect to housing, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed (religion), sex (including pregnancy, gender identity), sexual orientation, age, marital status, family status, disability, or the receipt of public assistance. "Disability" is defined by subsection 10(1) to include both physical conditions and mental disorders.
44. The Tenant did not provide any details with respect to his assertion that the Landlords engaged in discriminated conduct contrary to the Code by not accepting his rent payments. The Tenant has lived at the rental unit since 2018 and the issues only began after the Landlords served the N13 and stopped accepting his rental payments. As noted above, I do find that the Landlords improperly refused to accept rent payments, but I do not find that this raises a Human rights code issue. The Landlords' refusal to accept rent from this Tenant was due to their ignorance of their obligations under the Act.
45. The only remedy requested by the Tenant is the dismissal of the application based on his s.82 issues. I do not find that the Landlords' claim for rent arrears should be dismissed in these circumstances. While the Landlord refused to accept rent for a period of time, I do not find that this means that the Landlord has permanently waived claim to the rent. The Tenant continued to live in the rental unit, and it is unreasonable for the Tenant to expect that he should be entitled to live rent free. However, as set out below, while I am ordering the payment of the rent arrears, I am not ordering termination of the tenancy. Ultimately it was the Landlord that originally created this situation by improperly refusing to accept the rent.

Filing fee

46. The Landlords application filing fee of \$186.00 is not granted since the Tenant's actions did not lead to the filing of the L1 application. The Tenant was attempting to pay rent in April and May 2021, but the Landlords did not accept it. Therefore, I am electing to use my discretion under subsections 204(1) and 204(2) to deny the granting of the filing fee in favour of the Landlords.

Section 83 considerations

- 47. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to deny eviction pursuant to subsection 83(1)(b) of the Act.
- 48. The actions of the Landlords led to the rent arrears. I do not find that the Tenant should be penalised by losing his home due to the actions of the Landlords. I do however find that the Tenant is in rent arrears. Therefore, the rent arrears must be paid to the Landlords. If new rent arrears accumulate, the Landlord may file a new application with the Board.

It is ordered that:

- 1. The Tenant shall pay to the Landlord **\$28,409.60**. This amount includes rent arrears owing up to November 15, 2023. See Schedule 1 for the calculation of the amount owing.
- 2. If the Tenant does not pay the Landlord the full amount owing on or before March 30, 2024, the Tenant will start to owe interest. This will be simple interest calculated from April 1, 2024 at 7.00% annually on the balance outstanding.

February 28, 2024

Date Issued

 Sheena Brar
 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.

**Schedule 1
 SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay till November 15, 2023

Rent Owing To Hearing Date (November 15, 2023)	\$30,979.00
Application Filing Fee	\$0.00
NSF Charges	\$0.00

Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,569.40
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$28,409.60