



Order under Subsection 87(1) Residential Tenancies Act, 2006

Citation: LAKE PROMENADE APARTMENTS LIMITED. v DASILVA, 2023 ONLTB 78847

Date: 2023-12-15

File Number: LTB-L-078918-22

In the matter of: 315, 240 LAKE PROMENADE TORONTO
ON M8W1B2

Between: LAKE PROMENADE APARTMENTS
LIMITED.

Landlord

And

Adriana Silvestre DaSilva, Luciana Silvestre
DaSilva, Marco Aurelio Zarlenga

Tenants

LAKE PROMENADE APARTMENTS LIMITED. (the 'Landlord') applied for an order requiring Adriana Silvestre DaSilva, Luciana Silvestre DaSilva, and Marco Aurelio Zarlenga (the 'Tenants') to pay the rent that the Tenants owe.

This application was heard by videoconference on November 21, 2023. The Landlord's Legal Representative Howard Levenson and the Tenants' Legal Representative Purva Singh attended the hearing.

Determinations:

1. The Tenants did not pay the total rent they were required to pay for the period from May 1, 2021 to June 30, 2021.
2. The lawful rent is \$1,737.40. It is due on the 1st day of each month.
3. The Tenants have not made any payments since the application was filed.
4. The Tenants are no longer in possession of the rental unit. The tenancy was not lawfully terminated in accordance with a notice of termination, LTB order or agreement to terminate the tenancy. Therefore, the Tenants' obligation to pay rent ends on June 30, 2021.

Was the Tenants' notice of termination valid?

1. The parties agree that the Tenants gave the Landlord two notices of termination, one on April 11, 2021, and one on April 16, 2021, both to terminate the tenancy on May 31, 2021. The Tenants then vacated the rental unit on May 31, 2021.



2. Section 47 and 44 of the *Residential Tenancies Act* (2006) (the 'Act') allow a tenant to terminate a tenancy at the end of a period of the tenancy or at the end of the fixed term by giving 60 days' notice to the landlord.
3. The Tenants' notice of termination was less than 60 days, and therefore does not comply with the Act. As such, I now turn my mind to section 88 of the Act.

Arrears when improper notice

4. Section 88 of the Act states:

88 (1) If a tenant abandons or vacates a rental unit without giving notice of termination in accordance with this Act and no agreement to terminate has been made or the landlord has not given notice to terminate the tenancy, a determination of the amount of arrears of rent owing by the tenant shall be made in accordance with the following rules:

1. If the tenant vacated the rental unit after giving notice that was not in accordance with this Act, arrears of rent are owing for the period that ends on the earliest termination date that could have been specified in the notice, had the notice been given in accordance with section 47, 96 or 145, as the case may be.
 2. If the tenant abandoned or vacated the rental unit without giving any notice, arrears of rent are owing for the period that ends on the earliest termination date that could have been specified in a notice of termination had the tenant, on the date that the landlord knew or ought to have known that the tenant had abandoned or vacated the rental unit, given notice of termination in accordance with section 47, 96 or 145, as the case may be.
5. In the matter before me, the Tenants vacated after giving notice that was not in accordance with the Act. As such, arrears are calculated to the earliest date that proper notice could have been given. This is a monthly tenancy running from the first day of each month to the last day of each month. So, the termination date must be the last day of a month and at least 60 days after it was given. Therefore, the earliest termination date that could have properly been listed on a notice of termination given on April 16, 2021 is June 30, 2021.

Did the Landlord mitigate its losses?

6. Section 88(4) also requires me to consider whether the Landlord took reasonable steps to mitigate its losses.
7. Mr. Levenson submitted that the Landlord attempted to re-rent the unit as quickly as possible. Due to COVID-19, the rental market in the summer of 2021 was not favourable



and the Landlord was not able to re-rent the unit until September 2021. The Landlord had to offer the new tenant two months of free rent to secure the new tenancy.

8. Ms. Singh submitted that the Landlord did not do enough to mitigate their losses. According to Ms. Singh, one of the Tenants had lost his job and that resulted in him giving the notice of termination as quickly as possible in order to minimize any rent arrears to the Landlord. Ms. Singh submits that the Landlord gave the Tenants the option to find a sublet, but due to the unfavourable rental market at the time the Tenants were not able to find someone to take their place. Ms. Singh submitted that the Landlord did not accommodate the Tenants.
9. Based on the submissions of the parties, I find that the Landlord took reasonable steps to mitigate its losses. The Landlord advertised the unit for rent shortly after the Tenants moved out. Ms. Singh confirmed in the own submissions that the rental market was unfavourable at the time. And yet, the Landlord still managed to re-rent the unit after three months, having to take a loss of two months of rent in the new tenancy to secure the new tenant.
10. Section 44 and 47 of the Act specifically require tenants to give a minimum of 60 days notice. This requirement allows the Landlord to start looking for a new tenant in advance and helps to minimize any losses in rental income that may occur between one tenant moving out and another tenant moving in.
11. Section 88(4) of the Act only requires Landlords to take reasonable actions to mitigate their losses, not to go to the point of undue hardship. Ms. Singh's expectation of the Landlord to allow the Tenant to give less than 60 days notice is unreasonable. That would essentially require the Landlord to waive rent that they are entitled to under the Act. Furthermore, under section 3(1) of the Act, parties cannot contract out of the Act.
12. Since the Landlord took reasonable steps to mitigate their losses and still incurred those losses, the arrears shall be calculated to June 30, 2021 as explained above. The rent arrears and daily compensation owing to June 30, 2021 are \$3,474.80.
13. The Landlord collected a rent deposit of \$1,737.40 from the Tenants and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy is terminated.
14. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The Tenants shall pay to the Landlord \$1,938.40. This amount includes rent arrears owing up to June 30, 2021 and the cost of the application minus the rent deposit.



2. If the Tenants do not pay the Landlord the full amount owing on or before December 26, 2023, the Tenants will start to owe interest. This will be simple interest calculated from December 27, 2023 at 7.00% annually on the balance outstanding.

December 15, 2023

Date Issued

Kate Sinipostolova

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor Toronto
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.