



Order under Section 69

Residential Tenancies Act, 2006

Citation: Ashraf v Elrimawi, 2023 ONLTB 78913

Date: 2023-12-06

File Number: LTB-L-012905-23

In the matter of: FIRST FLOOR APARTMENT, 16 SYMINGTON AVE
TORONTO ON M6P3W1

Between: Zeeshan Ashraf Landlord

And

Khaled Elrimawi Tenant

Zeeshan Ashraf (the 'Landlord') applied for an order to terminate the tenancy and evict Khaled Elrimawi (the 'Tenant') because:

- the Tenant has been persistently late in paying the Tenant's rent.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on October 5, 2023.

The Landlord's legal representative, Moezzam Alvi, and the Landlord attended the hearing.

The Tenant also attended the hearing.

Determinations:

1. On January 11, 2023, the Landlord gave the Tenant an N8 notice of termination with a termination date of March 31, 2023. The notice of termination alleges the Tenant has persistently failed to pay the rent on the date it was due.
2. The rent is due on the 1st day of each month.

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3. The Tenant was in possession of the rental unit when the Landlord filed the application with the Board.
4. The N8 notice claims the Tenant has paid his rent late five times from January 2022 to January 2023 in a period of 13 months.
5. Subsection 43(2) of the Act states that a notice of termination must contain “reasons and details respecting the termination”. The Ontario Divisional Court in *Ball v. Metro Capital Property and Lockhurst* (December 19, 2002), Toronto Docket No. 8/02, found that subsection 43(2) of the former Tenant Protection Act, which is very similar to the provisions in the Residential Tenancies Act, 2006, requires that a notice served upon a tenant must include dates and times of the alleged offensive conduct, or in this case late payments of rent, with a detailed description of the alleged conduct engaged in by the tenant.
6. The Tenant submitted documentary evidence of a text exchange between the Landlord and the Tenant that the Landlord allowed the Tenant to pay his January 2022 late. The Tenant texted the Landlord on January 1, 2022 and indicated he was having issues with his financial institutions etransfer function. The Landlord responded back and told the Tenant to transfer it later. The Landlord then sends a text to the Tenant on January 3, 2022 stating, “Hey, I just realized the banks are closed today. Just fyi. Pls send the rent tomorrow.”
7. Given the Tenant’s evidence I do not find the Landlord’s claim for the Tenant paying his January 2022 rent late to be the fact. The Landlord clearly gave the Tenant permission to pay his rent after January 1, 2022.
8. This leads me to find the Landlord has not established the grounds and provided accurate reasons and details required in the N8 notice. Due to the Landlord’s false claim of late rent for January 2022 in the N8 notice I find this renders the N8 notice invalid and therefore the Landlord’s application must be dismissed.
9. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
10. This order contains all reasons for the determinations and order made. No further reasons will be issued.

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It is ordered that:

1. The Landlord's application is dismissed.

December 6, 2023 —

Date Issued

Greg Brocanier

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.