



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

**Citation:** Craig v Peeters, 2023 ONLTB 75188

**Date:** 2023-11-15

**File Number:** LTB-L-071386-22

**In the matter of:** Upper-140 Hepbourne Street Toronto,  
Ontario M6H 1K7

**Between:** Eli Craig Landlord

**And**

Jacqueline Peeters

Tenant

Eli Craig (the 'Landlord') applied for an order requiring Jacqueline Peeters (the 'Tenant') to pay the rent that the Tenant owes.

This application was heard by videoconference on September 27, 2022 and October 4, 2023.

The Landlord, the Landlord's Legal Representative Rachel Gibbons and the Tenant attended the hearing. Aimee Fairweather ('AF') testified on behalf of the Landlord.

### **Determinations:**

#### *Preliminary Issue – Res Judicata*

1. The Landlord's Legal Representative raised a preliminary issue outlining that the Tenant had previously raised the issues she intended to raise in accordance with s. 82 of the *Residential Tenancies Act, 2006* (the 'Act') in an application with respect to the Tenant's attempted assignment of the unit.
2. The Tenant argued that she intended on raising the issue within the context of this application to show the overall reasonableness of the Landlord regarding the termination of the tenancy.
3. I had instructed the parties to focus the evidence with respect to the application and directed the Tenant to refrain from referring to any evidence or claim that had been previously considered by the Board.

#### *Landlord's Evidence*

4. The unit in question is an upper floor unit located in a house that is located in the Dufferin Grove neighbourhood in Toronto.



5. The tenancy began on September 1, 2020 and the term of the lease was for one year until August 31, 2021.
6. The lawful rent was \$3,400.00. It was due on the 1st day of each month. The Tenant paid a last month's rent deposit for that amount.
7. On March 11, 2021, the Tenant had advised the Landlord that she had purchased a condominium and that the purchase closed on April 22, 2021. The Tenant expressed an interest in assigning or subletting the tenancy, as she acknowledged in an e-mail sent to the Landlord on that date that the term of the tenancy was until August 31, 2021.
8. The Landlord testified that he was amenable to the situation and had recommended a realtor to the Tenant to assist in finding a new tenant. The Landlord had suggested that the Tenant pay the cost for the realtor to find a new tenant and had also requested \$500.00 from the Tenant in order to vet the potential assignee.
9. The Tenant had paid the Landlord's fee and had attempted to assign the tenancy to the proposed assignee. The Landlord and the proposed assignee were unable to come to terms on an agreement.
10. On June 14, 2021, the unit was listed for rent and showings started shortly thereafter. The unit was listed for rent at a cost of \$3,600.00 per month. On August 10, 2021, a new tenant signed a lease for the unit for a term of one year for \$3,200.00 per month after negotiating same.
11. On June 11, 2021, the Landlord had contacted the Tenant about notice regarding showings of the unit and was advised by the Tenant that she was no longer living in the unit but still had items there and had requested notice for any showings. The Landlord testified that he never received the keys from the Tenant until August 28<sup>th</sup> or 29<sup>th</sup>, 2021 and AF testified that she had conducted showings of the unit into August of 2021.
12. The Landlord submitted that he would have rented the unit out earlier however, because the Tenant never gave formal written notice in accordance with the Act and told him that she was still in the unit as of June 11, 2021, he was not sure how to proceed.
13. As such, the Tenant paid rent for the months of March, April, May and June but had not paid the rent for July of 2021. The Landlord applied the Tenant's last month rent deposit to the month of August 2021 and is seeking \$3,400.00 rent for the month of July 2021.
14. The Tenant has not made any payments since the application was filed.

### *Tenant's Evidence*

15. The Tenant largely contests the arrears on the basis of her position that the Landlord failed to mitigate his losses as required under s. 16 of the Act which states that when a party becomes liable to pay any amount as a result of a breach of tenancy agreement, the person entitled to claim the amount has a duty to take reasonable steps to minimize their losses.



16. The Tenant testified that on June 2, 2021, she had advised the Landlord that she had already vacated the unit however, she had kept a set of keys to be cautious and to ensure that nothing untoward was happening. The Tenant also maintained her insurance in the unit and still had some items there, as well.
17. The Tenant argues that the Landlord failed to mitigate his losses as he listed the unit for \$200.00 more per month than what she had previously paid. The Tenant testified that she did not pay rent for July and had told the Landlord to apply her last month's rent deposit to that month.
18. The Tenant also alleged that she paid a key deposit of \$100.00, which the Landlord stated would be paid back so long as the rent is paid.
19. Further, the Landlord relies on s. 97(3) of the Act that states that a landlord may charge a tenant only for the landlord's reasonable out-of-pocket expenses incurred in giving consent to a subletting with respect to the \$500.00 vetting fee the Landlord charged the Tenant.

### *Analysis & Findings*

20. Section 37 of the Act states that a tenancy may only be terminated in accordance with the Act. Section 43 of the Act states that where the Act permits a tenant to give a notice of termination, the notice provided must be provided at least 60 days before the date the termination is specified to be effective, and that date shall be on the last day of a rental period.
21. On a balance of probabilities, I am not satisfied that the Tenant terminated the tenancy in accordance with the Act. There was never at any time an agreement between the Landlord and the Tenant to terminate the tenancy.
22. Section 88(1) of the Act states that if a tenant vacates a rental unit after giving notice that was not in accordance with the 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 s. 47, which states that a tenant may terminate a tenancy at the end of a period of the tenancy or at the end of the term of a tenancy for a fixed term by giving notice of termination to the landlord in accordance with s. 44.
23. On March 11, 2021, the Tenant advised the Landlord that she purchased a condominium and that the closing date was April 22, 2021. After the subletting process was unsuccessful, the Tenant states that she vacated the unit by at least June 11, 2021 when she advised the Landlord of same however, she kept items in the unit, she requested notices of entry to be provided to her up until August of 2021, had kept insurance on the unit, and did not provide the Landlord the keys for the unit until August 28<sup>th</sup> or 29<sup>th</sup>, 2021.
24. Based on the forgoing, I am satisfied on a balance of probabilities that the Tenant had possession of the unit until the end of the fixed term, which was August 31, 2023. As such, since the Tenant never provided notice in accordance with the Act, arrears of rent are owing to August 31, 2023.



25. The Tenant argues that s. 16 of the Act should apply and argued that the Landlord did not mitigate their losses. Having found that the Tenant had possession of the unit until August 31, 2023, I find this argument to be moot as the Landlord was never required to mitigate their losses until September 1, 2021, one day after the tenancy between the Landlord and the Tenant terminated.
26. As such, on a balance of probabilities, I am satisfied that the Landlord has proven that the rent arrears owing to August 31, 2021 are \$3,400.00, which represents rent for the month of July 2021.
27. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.

### *Section 82 Considerations – Vetting Fee & Key Deposit*

28. Section 17(3) of O.Reg 516/06 outlines that a landlord may charge a payment for a refundable key deposit not greater than the expected direct replacement costs. The evidence from both parties was that the keys were returned, and the \$100.00 deposit will be offset against the Tenant's rent arrears.
29. The Landlord testified that he had charged the Tenant \$500.00 to vet her prospective assignee. The Landlord testified that he had come to that amount based on his experience, which included checking references and conducting credit checks.
30. The Landlord agreed that he did not have any real out-of-pocket expenses and had spent about 10 hours speaking with the prospective assignee and exchanged 20 e-mails over 11 days.
31. Section 97(3) states that a landlord may charge a tenant for the landlord's reasonable out-of-pocket expenses incurred in *giving consent to a subletting* (emphasis added). It was clear from the evidence of the Landlord that his expenses were not out-of-pocket in nature wherein he had paid for a credit check and either way, the Landlord never outlined specifically what those types of costs would have been.
32. Further, the section states that the costs may be charged back where the sublet was consented to. In this case it was not. As such, I am satisfied on a balance of probabilities that the \$500.00 fee as charged was an illegal charge as defined under s. 135 of the Act and that amount will be offset against the Tenant's rent arrears.

### **It is ordered that:**

1. The Tenant shall pay to the Landlord \$3,001. This amount includes rent arrears owing up to July 31, 2021 and the cost of the application, less the \$600.00 credit as outlined.
2. If the Tenant does not pay the Landlord the full amount owing on or before November 26, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 27, 2023 at 7.00% annually on the balance outstanding.



**November 15, 2023**

**Date Issued**

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**Jagger Benham**

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.