



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

Citation: Moya v Liu, 2023 ONLTB 74630

Date: 2023-11-15

File Number: LTB-L-037605-23

In the matter of: 1713, 50 CHARLES ST E
TORONTO ON M4Y0C3

Between: Ignace Moya Landlord

And

Catherine Liu Tenant

Ignace Moya (the 'Landlord') applied for an order requiring Catherine Liu (the 'Tenant') to pay the rent that the Tenant owes.

This application was heard by videoconference on September 28, 2023.

The Landlord and the Tenant attended the hearing.

Determinations:

1. The Tenant did not pay the total rent they were required to pay for the period from February 1, 2023 to September 1, 2023.
2. The relevant factors and determinations here are:
 - a) The lawful rent is \$1,800.00. It is due on the 1st day of each month.
 - b) The Tenant has not made any payments since the application was filed.
 - c) The Landlord served the Tenant with an N4 Notice of Termination effective May 6, 2023.
 - d) This application was filed on May 14, 2023 so the Tenant was in possession of the rental unit when this application was filed.
 - e) The Tenant vacated the unit on September 1, 2023 and returned the keys to the Landlord.
 - f) The Tenant has not made any payments since the application was filed.
 - g) The Landlord collected a rent deposit of \$1,800.00 from the Tenant 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.
 - h) Interest on the rent deposit, in the amount of \$25.52 is owing to the Tenant for the period from February 7, 2023 to September 1, 2023.
3. The Landlord submits that rental arrears should run to September 30, 2023 and that section 88 of the Act should be extended to this situation as the Tenant vacated the rental



unit and provided less than 60 days notice as required by the *Residential Tenancies Act, 2006* (the 'Act').

4. As indicated in the Board's Interpretation *Guideline 11: Rent Arrears*, it is the Board's standard practice in such circumstances to award arrears of rent and daily compensation up to the date the tenant returns vacant possession to the landlord, less the last month's rent deposit and any interest owing on the deposit. I see no reason to depart from this standard practice.
5. One explanation for this, in addition to sections 134(1.1) and 88 of the Act, is that a notice of termination served by a landlord is an invitation to terminate the tenancy. When a tenant vacates the rental unit pursuant to such notice, the tenant accepts the landlord's offer to terminate the tenancy and the tenancy is then terminated based on the parties' implied agreement. Section 2(1) of the Act states that a "tenancy agreement" means an oral, written or implied agreement. Section 37(3) says a notice of termination need not be given if a landlord and a tenant have agreed to terminate a tenancy.
6. The Landlord argues that the Board should award daily compensation up to the date the tenancy would have ended if the Tenant had given valid notice of termination.
7. What the Landlord is essentially asking is that the result that flows from s. 88 of the Act be extended to this situation. Section 88 says that where a tenant vacates without giving a valid notice of termination, the tenant's liability for the rent ends on the earliest date the tenant could have given valid notice for, or when a new tenant moves in, subject to the landlord's duty to mitigate.
8. The problem with that submission is that the wording of section 88 explicitly indicates the Legislature did not intend for it to apply in the situation where a landlord serves notice to terminate. Clearly if the intention of the Legislature was that the same result would flow where the *landlord* serves a notice to terminate but the tenant vacates after the date of termination, it would not have included the limiting language of "the landlord has not given notice to terminate the tenancy". Section 88 does not assist the Landlord.
9. Further, the Landlord had repeatedly asked the Tenant after this application was filed for the Tenant to vacate by the end of August 2023, by way of email and an N11 form. Though the Tenant did not sign the N11 form, she advised the Landlord on several occasions that it was her intention to leave by the end of August 2023.
10. Given all of the above, I am not persuaded that I should depart from the Board's normal practice as outlined above and contained in *Interpretation Guideline 11*. The Interpretation Guideline offers a pragmatic and reasonable approach to the question of when liability for daily compensation should end in the situation where a tenant vacates after the date of termination on a notice of termination served by a landlord and is consistent with the Act.
11. The tenancy ended on September 1, 2023, as a result of the Tenant moving out in accordance with a notice of termination, LTB order or agreement to terminate the tenancy. Therefore, the Tenant's obligation to pay rent also ended on that date.



12. The Tenant did not dispute to the rent arrears owing claimed by the Landlord other than for the month of February. The Tenant submits that she was living in the unit with a friend prior to the commencement of her lease with the Landlord which started February 6, 2023. The Tenant testified that on or about January 30, 2023, her friend, who had an agreement to lease with the Landlord, vacated the rental unit and sublet the unit to her. The Landlord and the Tenant were negotiating a lease between them in order for her to register her name with the building's property management as the sole Tenant.
13. On or about February 2, 2023, the Landlord entered the unit with property management and attempted to have the Tenant escorted from the property and her key fob to the building deactivated. The Tenant threatened to contact the police and the Landlord and property management allowed her to gather some of her items and leave the unit by the next morning. The Tenant's key fob was then deactivated.
14. The Landlord submits that the property management company would not register the Tenant with the building and provide a new key fob until they had a lease on file with this Tenant. The Tenant and the Landlord signed a lease, and the tenancy began February 6, 2023. The Tenant did not have access to the building or unit from February 3 to February 5, 2023. The Tenant paid for the entire month of February.
15. The Landlord testified that he informed the property management company that they were negotiating a lease, but the Tenant could enter the unit at any time. This information was not relayed to the Tenant by the Landlord and the Tenant stayed at a friend's house for the duration that she was not able to access the unit. The evidence submitted by the Landlord shows an email to the Tenant on February 3, 2023, stating that she would not have access to the unit until the lease was signed. The Tenant replied to this email asking whether or not her fob would be activated and if building security would recognize her as a Tenant if she signed this lease. The Landlord did not reply to this email and the Tenant did not regain access to the unit until February 6, 2023.
16. As I stated at the hearing, an abatement of rent is a contractual remedy based on the principle that if you are paying 100% of the rent then you should be getting 100% of what you are paying for and if you are not getting that, then a tenant should be entitled to abatement equal to the difference in value. Given the above, I find that the Tenant is entitled to a 100% rent abatement for February 3, 4, and 5, 2023 in the amount of \$177.53 as she did not have access to the unit. This is based on the daily compensation amount of $\$59.18 \times 3 \text{ days} = \177.53 .
17. The rent arrears and daily compensation owing to September 1, 2023, are \$5,682.81
18. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.



It is ordered that:

1. The Tenant shall pay to the Landlord \$3,865.76. This amount includes rent arrears owing up to September 1, 2023 and the cost of the application minus the rent abatement or rebate/rent deposit and interest owing.
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

Colin Elsby

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.