



Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: Peel Housing Corp. O/A Peel Living v Firlotte, 2023 ONLTB 73383

Date: 2023-11-10 **File Number:**
LTB-L-062269-22-RV

In the matter of: 49, 3070 QUEEN FREDERICA DR
MISSISSAUGA ON L4Y3A9

Between: Peel Housing Corp. O/A Peel Living Landlord

And

Rachel Firlotte Tenant

Review Order

Peel Housing Corp. O/A Peel Living (the 'Landlord') applied for an order to terminate the tenancy and evict Rachel Firlotte (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-062269-22 issued on May 12, 2023.

On May 24, 2023, the Tenant requested that order LTB-L-062269-22 be reviewed.

On May 24, 2023, interim order LTB-L-062269-22-RV-IN was issued staying the order issued on May 12, 2023.

The review request was heard by videoconference on June 20, 2023.

On June 30, 2023, interim order LTB-L-062269-22-RV-IN2 granted the Tenant's review and adjourned the Landlord's application to be heard *de novo*.

The Landlord's application was heard *de novo* by videoconference on June 20, 2023 and October 24, 2023.

The Landlord's Agent, K. Ventura, the Tenant's Legal Representative, B. Robinson, and the Tenant attended both hearing dates.

Determinations:

Preliminary Issue – N4 Notice

1. The Notice to End Tenancy Early for Non-payment of Rent (N4 Notice) at the root of this application was served on the Tenant pursuant to section 59 of the *Residential Tenancies Act, 2006* (“Act”). The N4 Notice was served on September 9, 2022 via mail and deemed served on September 14, 2022. The N4 Notice claimed an amount of \$927.00 owing for the period of June 1, 2022 to September 30, 2022.
2. As explained below, I find that the N4 Notice at the root of this application is defective. The N4 Notice claimed an incorrect amount of rent owing to the Landlord at the time the N4 Notice was served as required by subsection 59(2) of the Act, given this, the Tenant was not correctly afforded the opportunity to void the N4 Notice.
3. Subsection 2(1) of the Act states that “rent” includes:

the amount of any consideration paid or given or required to be paid or given by or on behalf of a tenant to a landlord or the landlord’s agent for the right to occupy a rental unit and for any services and facilities and any privilege, accommodation or thing that the landlord provides for the tenant in respect of the occupancy of the rental unit, whether or not a separate charge is made for services and facilities or for the privilege, accommodation or thing, but “rent” does not include,

(a) an amount paid by a tenant to a landlord to reimburse the landlord for property taxes paid by the landlord with respect to a mobile home or a land lease home owned by a tenant, or

(b) an amount that a landlord charges a tenant of a rental unit in a care home for care services or meals

4. Subsection 59(2) of the Act states:

The notice of termination shall set out the amount of rent due and shall specify that the tenant may avoid the termination of the tenancy by paying, on or before the termination date specified in the notice, the rent due as set out in the notice and any additional rent that has become due under the tenancy agreement as at the date of payment by the tenant. Emphasis Added

5. At the hearing on June 20, 2023, the Tenant’s Legal Representative argued that there are errors in the N4 Notice with respect to the dates listed. She suspected that the Landlord applied the Tenant’s rental payments to earlier months, however if that occurred then the Tenant is unable to know the case to be met in this application. The Landlord’s Agent confirmed that the Tenant’s payments were applied to the oldest arrears and provided a ledger in support of this.
6. There was no dispute that the Landlord’s ledger provided to the Tenant’s Legal Representative for the June 20, 2023 hearing included other charges such as HST and Landlord invoices which did not provide any clarity for the Tenant. The application de novo

was adjourned to allow the Landlord's Agent to provide a ledger which clearly shows when the arrears commenced (zero balance) and for the Tenant to respond accordingly with her payment receipts.

7. On June 27, 2023, the Landlord's Agent submitted a copy of the rental ledger commencing December 2020 starting with a balance owing for that month of \$200.00. Then on October 20, 2023, the Landlord's Agent submitted another copy of the rental ledger commencing November 2020 starting with a balance owing for that month of \$120.00. This ledger also showed a balance of \$120.00 owing as of December 2020.
8. The Tenant's Legal Representative submitted that the Landlord's ledger submitted on June 27, 2023 showed a balance owing of \$913.00 as of September 9, 2022 which is less than the amount claimed in the N4 Notice. The Landlord's Agent stated that this ledger failed to show a N.S.F. charge of \$14.00 from the Tenant's November 2020 pre-authorized debit being returned N.S.F. Therefore, the Landlord's Agent stated that the second ledger which commences in November 2020 now shows \$927.00 outstanding as of September 9, 2022. The Landlord's Agent confirmed this is the ledger the Landlord intends to rely upon at this hearing.
9. Upon reviewing the Landlord's ledger commencing November 2020, it showed a payment received from the Tenant in November 2020 of \$80.00 which left a balance outstanding of arrears in the amount of \$120.00. The notation in the "comments" section for this month states the following:

"Tenant paid \$200.00 Nov 26, 2022, \$120.00 was applied to invoice"

10. The Landlord's Agent stated that if a tenant makes a payment and they are not in arrears, then the payment will be applied to any outstanding invoices issued by the Landlord. She also stated that tenants are served with a copy of any issued invoice. According to the Landlord's Agent these "invoices" issued by the Landlord could be for damages, N.S.F. fees, etc. She further stated that she is not here to argue about these invoices.
11. Given the Landlord's submitted ledger into evidence, there was no dispute that the Tenant paid \$200.00 in November 2020, however the Tenant was only credited \$80.00 towards the rent as the Landlord applied \$120.00 of her payment to an undisclosed invoice they had previously issued. This arbitrary application of the Tenant's payment elsewhere put the Tenant in arrears for that month despite the Landlord's Agent's statement(s) that tenant's payments are applied to rent (arrears) first and only extra payments/amounts are then applied to any outstanding issued invoice(s).
12. The Tenant's Legal Representative submitted that the Landlord cannot apply the Tenant's rental payment to "unproven" and/or "unordered" other debts owing to the Landlord. The Tenant's Legal Representative also submitted that when the Tenant paid \$200.00 in November 2020 and her rent is \$200.00, her intention was to pay the rent and it is not at the Landlord's discretion to apply the Tenant's payment elsewhere.
13. There was also no dispute that the Landlord's ledger showed a charge of \$186.00 to the

Tenant in May 2021. The Landlord' Agent stated that this was a filing fee paid by the Landlord for a previous application before the LTB. The Landlord's Agent also confirmed that that application was withdrawn and there was no order for these costs issued.

14. There was also no dispute that the Landlord' ledger applied \$94.00 of the Tenant's payment in August 2021 to another undisclosed invoice.
15. Based on the evidence before me, I was satisfied that the rent arrears claimed in the N4 Notice of \$927.00 served in September 2022 included amounts that were "rent". As per subsection 59(2) of the Act, the N4 Notice must set out the amount of "rent" due. Subsection 2(1) of the Act defines "rent" as including "any consideration paid or given or required to be paid or given by or on behalf of a tenant to a landlord or the landlord's agent for the right to occupy a rental unit and for any services and facilities and any privilege, accommodation or thing that the landlord provides for the tenant in respect of the occupancy of the rental unit." Rent does not include amounts for damages, N.S.F.s or filing fees.
16. There was no dispute that the running balance on the Landlord's ledger that leads to \$927.00 owing as of September 2, 2022, includes an amount of \$120.00 for an unknown invoice, an amount of \$94.00 for another unknown invoice, and an amount of \$186.00 for the Landlord's costs of filing an application in May 2021 that was not ordered. Therefore, there was a total amount of \$400.00 included as "rent" in the N4 Notice that was not for "rent".
17. Consequently, I find that the the N4 Notice at the root of this L1 application is defective and I have no authority to terminate the tenancy. Therefore, the Landlord's application is dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

November 10, 2023

Date Issued

Lisa Del Vecchio

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.