



Order under Section 69 Residential Tenancies Act, 2006

Citation: Khan v Catley, 2023 ONLTB 71641

Date: 2023-11-01

File Number: LTB-L-022675-23

In the matter of: 50 SURREY DR
ANCASTER ON L9K1L9

Between: Hayat Ahmad Khan Landlord

And

Loren Catley and Jeremy Westerhof Tenants

Hayat Ahmad Khan (the 'Landlord') applied for an order to terminate the tenancy and evict Loren Catley and Jeremy Westerhof (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on August 17, 2023.

The Landlord, the Landlord's support GS Warsi and the Tenant L Catley attended the hearing.

Determinations:

The N4 Notice to End Tenancy

1. On January 1, 2023, The Landlord served the Tenants with a Notice to End Tenancy Early for Non-payment of Rent (N4 Notice), with a termination date of December 31, 2022.
2. The N4 Notice is invalid because it was not given to the Tenants at least 14 days before the termination date as required by section 59(1) of the *Residential Tenancies Act, 2006* (the 'Act').
3. The invalid N4 Notice deprives that Board of the jurisdiction to terminate the tenancy. Therefore, the Landlord's request for eviction on this application will be denied.
4. The Landlord requested that the L1 application be amended so as to seek arrears of rent only.
5. The Tenant did not object to the Landlord's request.
6. Therefore, this application is amended to seek rent arrears only.
7. As of the hearing date, the Tenants were still in possession of the rental unit.

8. The Tenants did not pay the total rent they were required to pay for the period from June 1, 2022 to August 31, 2023.
9. The lawful rent is \$3,578.00. It is due on the 1st day of each month.
10. The Tenant has paid \$2,000.00 to the Landlord since the application was filed.
11. The uncontested rent arrears owing to August 31, 2023 are \$38,550.00.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
13. There is no last month's rent deposit.

The Board's Monetary Jurisdiction

14. The amount claimed by the Landlord exceeds the monetary jurisdiction of the Board. Subsection 207(1) of the Act limits the monetary jurisdiction of the Board to that of the Small Claims court, which is currently \$35,000.00.
15. As the Small Claims Court has the authority to award costs on top of its monetary jurisdiction, the LTB has the same authority. (see Wu v. Adler, 2019 CanLII 94002 (ON SCSM)).
16. The Landlord was advised of the Board's monetary limitation and that section 207 (3) of the Act provides if a party obtains a Board order at the maximum amount all rights of the party in excess of the Board's monetary jurisdiction are extinguished. The Landlord acknowledged that the maximum the Board can order the Tenant to pay is \$35,000.00.

The Tenants' request

17. The Tenant L Catley said that the Tenants plan to file a T6 Tenant Application about Maintenance with the Board. She requested that the Tenants be allowed to pay the rent amount owing to the Landlord to the LTB in trust.
18. The Landlord's application was made on March 26, 2023.
19. The Notice of Hearing was e-mailed and mailed to the Tenants on June 22, 2023.
20. The Tenant did not provide any testimony or documentation, either in the hearing or uploaded to the online portal, to support any maintenance issues with the rental unit.
21. The Tenants have been in arrears of rent since June, 2022.
22. Having considered these circumstances, I will not permit the Tenants to pay their rent into the LTB's trust account – it must be paid directly to the Landlord. The Tenants are entitled to file their own application, seeking remedies as they may see fit, but given the substantial arrears any delay in payment prejudices the Landlord.

It is ordered that:

1. The Tenants shall pay to the Landlord \$35,186.00. This amount includes rent arrears owing up to August 31, 2023 and the cost of filing the application.
2. If the Tenants do not pay the Landlord the full amount owing on or before November 12, 2023, the Tenants will start to owe interest. This will be simple interest calculated from November 13, 2023 at 7.00% annually on the balance outstanding.

November 1, 2023

Date Issued

Heather Kenny

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.