



Order under Section 69 Residential Tenancies Act, 2006

Citation: Centurion Property Associates Inc v Goncalves, 2023 ONLTB 70001

Date: 2023-10-30

File Number: LTB-L-027671-23

In the matter of: 9, 707 DUNDAS ST W
WHITBY ON L1N2N3

Between: Centurion Property Associates Inc Landlord

And

Andrew Goncalves Tenant

Centurion Property Associates Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Andrew Goncalves (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 10, 2023.

The Landlord's Legal Representative D. Abraham and the Tenant attended the hearing.

Determinations:

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. At the hearing the Tenant disputed the amount of the lawful rent and the N1- Notice of Rent Increase served on him.
3. There is no dispute that the tenancy started on April 2020, and the monthly rent at the start of the tenancy was \$1,665.00. What is in dispute is whether Landlord served the Tenant with a Notice of Rent Increase (N1) in 2022 to increase the rent from \$1,665.00 to \$1,684.98.
4. The Landlord submitted a N1 notice to the Board, which was signed on September 22, 2021 for a rent increase of 1.20% or \$19.98 to (from \$1,665.00 to 1,684.98) effective January 1, 2022. There was a Certificate of Service attached with this N1 that it was served September 22, 2021 by placing it under the door or through a mail slot in the door.
5. The Landlord then served another N1 – Notice of Rent Increase on September 22, 2022 for a rent increase of 2.50% or \$42.12, effective January 1, 2023. This increased the Tenant's rent from \$1684.98 to \$1727.10 which is the current rent as per the Landlord. There was a Certificate of Service attached with this N1 that it was served September 22, 2022 by placing it under the door or through a mail slot in the door.

6. The Tenant testified he never received the N1 notice or another notice from the Landlord that they will start enforcing the 2022 rent increases from a certain date.
7. The Tenant testified that he did receive the second NORI for the rent increase effective January 1, 2023, but the amount on the NORI was wrong. The Tenant believed the NORI was wrong because the amount of rent increase listed on it did not match his current rent that he was paying.
8. Text messages between the Tenant and Emily who is the supervisor at the residential complex were put into evidence. In the text exchange Emily tells the Tenant that this was his second rent increase. He questioned why the Landlord had never raised the issue of short payment in 2022 when the Tenant continued to pay \$1665.00.
9. The superintendent Emily states in her text that she personally served the first N1 on September 23, 2021 and she has a record of the certificate of service. She also states that the reason the Tenant's short payments were not brought to his attention until then because the arrears need to go to a certain amount before accounting will prepare an N4 notice. Usually, the threshold is \$300.00 for the Landlord to serve a tenant with a N4 notice.
10. The Tenant also testified that the way the Landlord delivers the notices is defective. He stated that they just prop the notices halfway through the mail slot and sometimes it drops outside, and it can be misplaced easily. The Landlord may have served him that way, but he testified that he never received the first N1 notice which renders the second N1 defective as well since the amounts are wrong.
11. Based on the evidence before me, I am satisfied that the Landlord validly served the Tenant with N1 notices of rent increases in 2021 and 2022. The Landlord filed the certificate of service for each notice and the service was confirmed by the text messages to the Tenant from the Landlord's agent.
12. Therefore, the Landlord has established that the rent was lawfully increased from \$1,665.00 to \$1,684.98 effective January 1, 2022, and then was lawfully increased from rent from \$1,684.98 to \$1,727.10 effective January 1, 2023.
13. As Tenant has paid the Landlord \$1,665.00 per month from the start of the tenancy in April 2020 until now, the Tenant is in arrears of rent.
14. As of the hearing date, the Tenant was still in possession of the rental unit.
15. The lawful rent is \$1,727.10. It is due on the 1st day of each month.
16. Based on the Monthly rent, the daily rent/compensation is \$56.78. This amount is calculated as follows: $\$1,727.10 \times 12$, divided by 365 days.
17. The Tenant has paid \$11,654.00 to the Landlord since the application was filed.
18. The rent arrears owing to October 31, 2023 are \$851.08.
19. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
20. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to

grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

21. The Tenant and the Landlord’s Legal Representative agreed upon a payment plan in case I find that the rent increases were valid.

It is ordered that:

1. The Tenant shall pay to the Landlord \$1,037.08 for arrears of rent up to October 31, 2023 and costs.
2. The Tenant shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:

a) On or before November 1, 2023	\$86.43
b) On or before December 1, 2023	\$86.43
c) On or before January 1, 2024	\$86.43
d) On or before February 1, 2024	\$86.43
e) On or before March 1, 2024	\$86.43
f) On or before April 1, 2024	\$86.43
g) On or before May 1, 2024	\$86.43
h) On or before June 1, 2024	\$86.43
i) On or before July 1, 2024	\$86.43
j) On or before August 1, 2024	\$86.43
k) On or before September 1, 2024	\$86.43
l) On or before October 1, 2024	\$86.33

3. The Tenant shall also pay to the Landlord new rent on time and in full as it comes due and owing for the period November 1, 2023 to October 1, 2024, or until the arrears are paid in full, whichever date is earliest.
4. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 2 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after October 31, 2023.

October 30, 2023
Date Issued

 Sheena Brar
 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.