



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Trustee - Amilthini Kanapathippillai v Reed, 2023 ONLTB 64180

Date: 2023-09-26

File Number: LTB-L-032413-23

In the matter of: 16 Cottonwood Dr
Belleville ON K8N0J2

Between: Estate of Krishnaratnam Krishnakumar` Landlord
Trustee - Amilthini Kanapathippillai

And

Glenn Reed Tenant

Estate of Krishnaratnam Krishnakumar` Trustee - Amilthini Kanapathippillai (the 'Landlord') applied for an order to terminate the tenancy and evict Glenn Reed (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

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

The Landlord's Representative Paula Stevens and the Tenant, and his Representative, Dara Saunders attended the hearing.

Preliminary Issue

1. The Tenant raised a preliminary issue.
2. The Tenant argued that the N4 Notice of Termination was invalid, because the Landlord raised the rent above the permitted guidelines.
3. The Landlord submitted that the rental unit is exempted from the *Residential Tenancies Act, 2006* (the "Act") by virtue of s. 6.1
4. The N4 Notice of Termination stated that the rent owing for February 1, 2023 was \$2,650.00, of which \$2,100 had been paid by the Tenant.
5. The Tenant argued that the rent should be \$2,100.00 only.
6. The Tenant was advised on October 24, 2023 that his rent would increase to \$2,650 on February 1, 2023.
7. There is no dispute that the required 90 days notice was given and that the increase was above the permitted guideline amount.
8. The Tenant relied on s. 6.1(4) of the *Act* which states:

Non-application of exemption under subs. (2) or (3)

(4) Subject to subsection (5), the exemption under subsection (2) or (3) does not apply with respect to a rental unit that is subject to a tenancy in respect of which a tenancy agreement was entered into on or before November 15, 2018.

9. Subsection (5) is not relevant here, as the tenancy in question was the first tenancy not a subsequent tenancy.
10. Subsections (2) and (3) set out various exemptions from the rules relating to rent increases. Subsection (2) is not relevant here. As per subsection (3), rental units in detached houses, like the rental unit in this case, are exempt from the rent increase rules, if they comply with the conditions set out in paragraphs 1 – 4 of that subsection. The Tenant did not dispute that the rental unit satisfies all of these conditions in (3).
11. However, the central dispute between the parties is whether the tenancy in this case was entered into on or before November 15, 2018 and, if so, whether that results in the non-application of subsections (2) and (3) to this rental unit by virtue of subsection (4).
12. There is no dispute that the tenancy itself *commenced* on December 1, 2018.
13. The Tenant signed on October 31, 2018, and paid first and last month's rent. The Landlord signed on November 1, 2023.
14. Therefore, although the tenancy did not commence until December 1, 2018, the tenancy agreement was entered into, at the latest, by November 1, 2023, when the Landlord signed, and the offer and acceptance were complete.
15. Subsection 6.1(4) references the date the tenancy agreement was entered into, not the date of the tenancy itself, as the relevant date for whether the rental unit is exempt from the rent control rules. This seems deliberate – other areas of section 6.1 tie the exemption to the date the rental unit was occupied instead: see for example s. 6.1(3)4i.
16. I therefore find for the Tenant.
17. As the tenancy agreement was entered in prior to November 15, 2018, the result is that the Landlord is not exempt from the rent control rules.
18. The rent increase was therefore invalid.
19. As a result, the N4 Notice of Termination, which claimed that \$550.00 were owing, being the amount of the rent increase, was also invalid.

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. I have already determined that the N4 was invalid.
3. As a result, eviction is no longer within my jurisdiction.
4. The Landlord did not lead evidence as to whether they would elect with withdraw their L1 application, or seek an order for arrears only, in the event the N4 was invalid.
5. As of the hearing date, the Tenant was still in possession of the rental unit.
6. The lawful rent is \$2,100.00. It is due on the 1st day of each month.
7. Based on the Monthly rent, the daily rent/compensation is \$69.04. This amount is calculated as follows: \$2,100.00 x 12, divided by 365 days.
8. The Tenant has paid \$6,300.00 to the Landlord since the application was filed.
9. The rent arrears owing to August 31, 2023 are \$2,100.
10. The Landlord incurred costs of \$186.00 for filing the application and is not entitled to reimbursement of those costs, as the Tenant has largely succeeded in this application.
11. As the Landlord did not elect whether to abandon his application, or, convert his application to an L9 application for arrears of rent only, I will order the payment of arrears only, as only one month's rent was owing and since the Tenant was only disputing the rent increase, not the rent owing.
12. I will make no order as to costs.

It is ordered that:

1. The Tenant Shall pay the Landlord \$2, 100, being the arrears of rent to August 31, 2023, on or before October 7, 2023.
2. If the Tenant fails to pay the Landlord the amount owing, by October 7, 2023, the Tenant will start to owe interest at the judgment rate.
3. There will be no order for costs, as the Tenant has largely succeeded in defending this application.

September 26, 2023
Date Issued

James Campbell
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.