



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

Citation: WCPT: Georgian Inc. DBA: Foundry Georgian v Sisalith, 2023 ONLTB 62602

Date: 2023-09-20

File Number: LTB-L-070206-22

In the matter of: Suite 208, Bedroom 2, 308 GEORGIAN DR BARRIE ON
L4M7B7

Between: WCPT: Georgian Inc. DBA: Foundry Landlord
Georgian

And

Cindy Sisalith Tenant

WCPT: Georgian Inc. DBA: Foundry Georgian (the 'Landlord') applied for an order to terminate the tenancy and evict Cindy Sisalith (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on August 15, 2023.

The Landlord's legal representative Sara Murtadha, the Tenant's legal representative James Moak and the Tenant attended the hearing.

Determinations:

Preliminary issue: Tenant Not In Possession

1. The Tenant raised a preliminary issue that the Tenant was not in possession of the rental unit at the time the Landlord's application was filed on November 22, 2022. In this regard, it is the Tenant's position the Landlord was not entitled to file an L1 Application and should have chosen to file an L10 Application.
2. While the Landlord admittedly did not file an L10 Application, the legislation provides the Board with jurisdiction to award rent arrears as against tenants no longer in possession at the time the application is filed. In this regard, section 87(1)(b) of the *Residential Tenancies Act, 2006 (Act)* states as follows:

A Landlord may apply to the Board for an order requiring a tenant or former tenant to pay arrears of rent if,

(b) in the case of a tenant or former tenant no longer in possession of the rental unit, the tenant or former tenant ceased to be in possession on or after the day subsection 18 (1) of

Schedule 4 to the *Protecting Tenants and Strengthening Community Housing Act, 2020* comes into force.

File Number: LTB-L-070206-22

2023 ONLTB 62602 (CanLII)

3. While there are some procedural differences with respect to service, the substantive claims under an L1 and L10 Application are identical in this case. As there is no dispute the Tenant had adequate notice of the Landlord's L1 application, I find it would be fair in the circumstances to treat the Tenant's L1 Application as an L10 application.
4. The Landlord's application is in respect of rent arrears alleged to be owing for the period of November 2022 through to August 27, 2023. The Landlord is in possession of a last month's rent deposit.
5. The rental unit is comprised of a room within a shared suite and the residential complex is comprised of both students and non-students.
6. The Landlord's representative submits that pursuant to the fixed term date in the lease, the Tenant should be liable for rent arrears owing up to August 27, 2023. For this reason, the Landlord seeks an order for rent arrears in the amount of \$6,293.00 comprising 9 months of alleged unpaid rent (the last month's rent deposit being applied to the 10th month). The Landlord's representative indicated the rental unit was only leased for September 1, 2023.
7. The Tenant submits there should be no order for rent arrears, as the Landlord was aware of the Tenant vacated the rental unit in September 2022 and the Landlord failed to take reasonable steps to minimize their losses under [Section 16](#) of the [Act](#).
8. With respect to the move-out date, the Tenant testified she advised the Landlord in midSeptember 2022 that she intended to move out at the end of September 2022 (being approx. 11 months prior to the lease agreement end date). The Tenant advised:
 - (i) that she returned keys to the Landlord's office on move-out; and,
 - (ii) that she had email dialogue with the Landlord in September 2022 advising of her intentions to vacate at the end of September 2022 and of potential sublets to take her place.
9. Although the Landlord's legal representative indicated vacancy of the rental unit was only discovered by the Landlord as a result of a unit inspection on November 23, 2022, based upon the evidence adduced, I find it more likely the Landlord was aware the Tenant vacated the rental unit on September 30, 2023. In this regard, I also note the Tenant produced a "*move out confirmation*" email received from the Landlord on September 29, 2022 advising "*Thank you for submitting your move out information!*".

10. With respect to the issue of mitigation, the Tenant testified she provided the Landlord with four potential sublets, but for whatever reason, the Landlord failed to rent out the unit to the proposed subtenants - or any other person. The Tenant thus submits the Landlord failed to act diligently and the Tenant should thus not be responsible for the arrears claimed.

File Number: LTB-L-070206-22

11. The Landlord's legal representative responded that two of the potential sublets were not students (as preferred by the Landlord for new tenants), and two of the potential sublets did not meet the required credit scores.
12. The onus to prove the allegations in this application rests with the landlord. No documentation or other supporting documents were tendered in support of the Landlord's efforts to re-rent the rental unit subsequent to the Tenant's departure. Further, the Landlord itself did not attend at the hearing to provide direct evidence of mitigation efforts taken such rental advertisements or showings undertaken and/or to speak to market challenges or justification for not leasing the unit to the Tenant's proposed sublets ...etc.
13. While I appreciate the Landlord's representative's submission it would take some time for the Landlord to find a qualified tenant, in the absence of more convincing evidence of mitigation efforts, I find it reasonable for the Landlord to have re-rented the rental unit for December 1, 2022, being two months after the Tenant vacated the rental unit. As the Tenant paid for the month of October 2022 and the Landlord is in possession of the Tenant's last month's rent deposit, I find there are no arrears owing.

It is ordered that:

1. The Landlord's application is dismissed.

**September 20, 2023 Date
Issued**

Peter Nicholson
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.