



Order under Section 87(1) Residential Tenancies Act, 2006

Citation: Marthi v Clarke, 2023 ONLTB 56390

Date: 2023-08-21

File Number: LTB-L-040092-22

In the matter of: 1405, 33 ELM DR W
MISSISSAUGA ON L5B4M2

Between: Narasimha Rao & Sudha lakshmi Marthi Landlords

And

Andrew Clarke and Donna Bent-White Tenants

Narasimha Rao & Sudha Lakshmi Marthi (the 'Landlord') applied for an order to terminate the tenancy and evict Andrew Clarke and Donna Bent-White (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

This application was heard by videoconference on July 4, 2023.

Both Landlords and the Tenant Andrew Clarke attended the hearing.

Determinations:

Preliminary Issue with the N4 Notice and Application

1. The Landlord served the Tenants with a Notice to End Tenancy Early for Non-payment of Rent (N4 Notice).
2. The N4 notice states that rent was unpaid for July 2022, however at the hearing the parties agreed that rent was not paid for June 2022. Rent was paid for July 2022.
3. Subsection 43(2) of the *Residential Tenancies Act, 2006* (the 'Act'), requires landlords to set out the reasons and details respecting the termination. The Board's Interpretation Guideline 10, "Procedural Issues Regarding Eviction Applications", states that the Board will find a notice of termination defective if it is confusing to the degree that a reasonable person could not understand precisely what it means.
4. I find that the notice of termination was confusing as it stated the wrong month in which rental arrears accumulated. As such I find the notice of termination invalid.
5. The Landlords indicated that as only one month of rent was outstanding, they were not seeking eviction. As such their application is converted to an L9 application for arrears only.

6. The Landlord's application also states the wrong arrears period. However, unlike a notice of termination an application can be amended. At the hearing the Tenant A.C was aware of

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the correct month in which rent was not paid, and therefore was able to adequately prepare for the hearing. As such I do not find there is any prejudice to the Tenants to allow the Landlords to amend their application to reflect that June 2022 rent is outstanding, not July 2022.

The Application

7. The parties agree that the Tenants have paid all rent owing for the period of July 2022 to July 2023. The only dispute is about June 2022.
8. The Landlord's collected a rent deposit from the Tenants in the amount of \$1,750.00 at the start of the tenancy.
9. In 2022 the parties had discussions about the Tenants vacating the rental unit and discussed the last month's rent deposit being applied to June 2022. However, the Tenants did not vacate and are still in possession of the rental unit.
10. The Tenants did not pay rent for June 2022 and the Landlord internally applied the last month's rent deposit to that month. The Landlord now seeks for the Tenants to provide the Landlord with another rent deposit. The Tenants submit that nothing further needs to be paid as the Landlords are not entitled to a rent deposit and the Landlords received compensation for June 2022 already.
11. In accordance with subsection 106(10) of the Act the last month's rent deposit shall be applied to the rent for the last month of the tenancy.
12. Pursuant to section 3(1) of the Act parties cannot contract out of the act. This means that parties cannot agree to do something contrary to the Act.
13. In light of sections 106(10) and 3(1) of the Act when the Tenants did not vacate in June 2022, the Landlords were not authorized to apply the last month's rent deposit to June 2022. As such, the Landlords are still in possession of the last month rent deposit and rent for June 2022 remains unpaid. As such, I find that \$1,750.00 is outstanding to the Landlord in rent arrears for June 2022.
14. The Tenants submit that they can pay off the outstanding arrears in either 6 or 7 equal payments. The Landlords are not opposed to the Tenants paying off the outstanding arrears in installments.
15. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The Tenants shall pay to the Landlord \$1,936.00. This amount includes rent arrears owing for June 2022 and the Landlord's filing fee.
 2. The Tenants shall pay the amount in paragraph 1 in accordance with the following schedule:
 1. On or before September 15, 2023 a payment of \$276.57;
 2. On or before October 15, 2023 a payment of \$276.57;
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3. On or before November 15, 2023 a payment of \$276.57;
 4. On or before December 15, 2023 a payment of \$276.57;
 5. On or before January 15, 2024 a payment of \$276.57;
 6. On or before February 15, 2024 a payment of \$276.57;
 7. On or before March 15, 2024 a payment of \$276.57.
3. If the Tenants fail to make any of the payments in accordance with paragraph 2, the entire amount outstanding will immediately become due and owing and interest will start accumulating from the day after the missed payment. This will be simple interest calculated from the day after the missed payment at 6% annually on the balance outstanding.

August 21, 2023**Date Issued**

 Amanda Kovats

Member, Landlord and Tenants 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.