



Order under Section 69 Residential Tenancies Act, 2006

Citation: Chris Basdeo v Daniel Young, 2023 ONLTB 45024

Date: 2023-06-19

File Number: LTB-L-074242-22

In the matter of: 1055 LINDEN WAY
SARNIA ON N7S2C7

Between: Chris Basdeo Landlord

And

Daniel Young Tenant

Chris Basdeo (the 'Landlord') applied for an order to terminate the tenancy and evict Daniel Young (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

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

The Landlord 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. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,000.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$32.88. This amount is calculated as follows: \$1,000.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to May 31, 2023 are \$2,000.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,000.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
9. Interest on the rent deposit, in the amount of \$16.71 is owing to the Tenant for the period from September 9, 2022 to May 10, 2023.

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10. This tenancy is based on an oral agreement which commenced on September 9, 2022, a prorated rent was collected by the Landlord and an additional \$1,000.00 which the Landlord deemed to be the last months rent deposit.
11. The Tenant responded to an ad which suggested a two (2) month minimum rental period would be considered. The Tenant submitted that since this was a short term lease he attributed the \$1,000.00 as October 1, 2022 rent and not as last month's rent deposit.
12. The Landlord and Tenant both agreed that there is a difference of opinion surrounding the \$1,000.00, that is, if this amount was the rent payable for October 1, 2022 or last months rent deposit.
13. On review of the N4 – the Notice to terminate the tenancy for non-payment of rent, the Landlord indicates that rent was paid for September and October and that he is seeking non-payment of rent for November. This is inconsistent with the submissions made at the time of hearing.

Subsections 106(1) and 106(10) of the Residential Tenancies Act, 2006 (the Act')

14. Section 106(1) of the Act states:, "A landlord may require a tenant to pay a rent deposit with respect to a tenancy if the landlord does so on or before entering into the tenancy agreement. (Emphasis added.) In other words a landlord cannot require a tenant to pay a rent deposit after the tenancy commences.
15. Noting that the Landlord alleges that he collected the last months rent deposit on September 9, 2022 this would be consistent with the intent of Section 106(1) as this was the date of the commencement of the tenancy.
16. Based on the evidence before me, I accept that the amount of \$1,700.00 as collected by the Landlord on or about September 9, 2022 was for the allocation of prorated rent for September (\$700.00) and \$1,000.00 as the last month's rent deposit.
17. The Residential Tenancies Act, 2006 (the "Act") at section 59(2) requires particular contents of an N4 Notice of Termination, which includes the requirement that the amount of rent shall be specified. In the case before, the N4 outlined that the rental arrears are stemming from non-payment of rent in the month of November 2022 and not in October 2022 as alleged by the Landlord in his oral submissions.
18. Furthermore, the Landlord submitted a document into the Board's record, "Statement of Rent Paid/ Owing", in which it is also noted that there were no rents received for October 1, 2022 and that a cash payment was received on November 1, 2022. Again, while consistent with the Landlord's oral submissions, this is inconsistent with what is documented on the N4 notice, this notice can not be amended.
19. Given these inconsistencies, there is serious error contained in the N4 Notice of Termination, the period of rent arrears claimed does not properly reflect the exact period/ month that is being alleged as owing. Since the N4 Notice did not properly give the Tenant the opportunity to understand what specific periods of alleged rent arrears were being

claimed, the N4 Notice is rendered invalid. The Board does not have jurisdiction to order eviction where the N4 is invalid.

It is ordered that:

1. The Tenant shall pay to the Landlord \$2,000.00, which represents the amount of rent owing up to May 31, 2023, less any amounts already paid to the Landlord.
2. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
3. If the Tenant do not pay the Landlord the full amount owing on or before June 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 1, 2023 at 6.00% annually on the balance outstanding.

June 19, 2023
Date Issued

Alicia Johnson
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.