



Order under Section 69 Residential Tenancies Act, 2006

Citation: WCPT: Georgian Inc. DBA: Foundry Georgian v Bethanie Brereton, 2023 ONLTB 40371

Date: 2023-05-29

File Number: LTB-L-069971-22

In the matter of: SUITE 204, BEDROOM 3, 308 GEORGIAN DR
BARRIE ON L4M7B7

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

And

Bethanie Brereton Tenant

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

This application was heard by videoconference on May 9, 2023.

The Landlord attended the hearing. The Landlord was represented by Sara Murtadha. The Tenant attended the hearing and was represented by Andrea Lahey.

Determinations:

1. The parties dispute whether the L1 application is properly before the Board on two grounds. First, the parties are in dispute whether the Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). Secondly, the parties dispute whether the Tenant paid the rent owing under the tenancy before the date the application was filed.
2. For reasons that follow, the L1 application is granted.
3. The following facts are not in dispute:
 - a. The Tenant was in possession of the rental unit on the date the application was filed.
 - b. The Tenant vacated the rental unit on December 31, 2022.
 - c. The lawful rent is \$708.00. It was due on the 1st day of each month.
 - d. The Tenant had paid \$708.00 to the Landlord since the application was filed.

- e. The Landlord collected a rent deposit of \$700.00 from the Tenant and the rent deposit was applied against rent due for December 2022, the last month of the tenancy.
4. Interest on the rent deposit, in the amount of \$11.12 is owing to the Tenant for the period from September 5, 2020 to December 31, 2022.

Tenant's evidence

5. The Tenant testified to two grounds on which the application should be dismissed.
6. First, the Tenant testified that she never received an N4 Notice, only becoming aware of the existence of the N4 Notice when Board proceedings commenced. As such, in her view, the L1 application is not properly before the Board and should be dismissed.
7. Secondly, the Tenant was also of the view that as she vacated the unit on December 31, 2022, the rent deposit should be applied to the month of December 2022 (the last month of the tenancy) leaving with her without a balance to be paid. Since she paid all rent due under the tenancy agreement, she should not be held responsible for the application fee as she satisfied the balance and, in her view, the Landlord had no reason to file an application with the Board. This is the second ground the application should be dismissed.

Landlord's evidence

8. The Landlord's legal representative did not call any witnesses despite the hearing being stood down to provide time for the Landlord or another witness to attend the hearing to provide oral evidence.
9. The legal representative submitted that the Tenant was served with an N4 Notice as evidenced by the certificate of service filed with the Board. Given that proper service of the notice had taken place, the L1 application is properly before the Board and, as such, the Tenant should be responsible for the application fee despite having satisfied the arrears. The individual who served the N4 Notice did not attend the hearing to testify to the efforts made to serve the N4 Notice. The Tenant contests that she was given an N4 Notice.
10. The legal representative submitted that the Tenant made a payment of \$708.00 on December 3, 2022, after the date of termination identified on the N4 Notice (which was November 18, 2022). As the Tenant did not void the N4 Notice the Landlord was required to file its application with the Board, incurring the cost of the application which the Tenant is, in the legal representative's view, liable for.

Analysis

11. Subsection 106(10) of the *Residential Tenancies Act, 2006* (the 'Act') provides that a landlord shall apply a rent deposit that a tenant has paid to the landlord or to a former landlord in payment of the rent for the last rent period before the tenancy commences.

12. Subsections 87(1) and (1.1) of the Act, when read together, provides that a landlord may apply to the Board for an order requiring a tenant or former tenant to pay arrears of rent if the tenant or former tenant did not pay rent lawfully under the tenancy agreement, and such an application may be made while the tenant was still in possession of the rental unit, or no later than one year after the tenant or former tenant ceased to be in possession of the rental unit.
13. Based on the evidence presented at the hearing, I am satisfied that, pursuant to subsection 106(10) of the Act, the Landlord applied the rent deposit to the last month of the tenancy which was December 2022.
14. I am also satisfied that the Landlord's application is properly before the Board pursuant to subsections 87(1) and (1.1) of the Act. In this case, the Landlord was permitted to file an application seeking outstanding arrears which does not require serving the Tenant an N4 Notice. Without deciding whether the N4 Notice was properly served, once the Tenant vacated the unit, the Landlord was permitted to seek the outstanding arrears under subsection 87 of the Act, which they did. This application was filed on November 22, 2022 at which time the Tenant was in arrears of \$708.00 that was paid on December 3, 2022. Consequently, the Landlord incurred the cost for the filing fee which the Landlord is entitled to, and I will award accordingly.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of December 31, 2022, the date the Tenant moved out of the rental unit
2. The Tenant shall pay to the Landlord \$182.88. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
3. If the Tenant does not pay the Landlord the full amount owing on or before June 9, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 10, 2023 at 6.00% annually on the balance outstanding.

May 29, 2023
Date Issued

Emile Ramlochan
Member, Landlord and Tenant Board

15 Grosvenor St, 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.

*Note: When the LTB directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay as the tenancy is terminated

Rent Owing To Move Out Date	\$1,416.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$708.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$700.00
Less the amount of the interest on the last month's rent deposit	- \$11.12
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$182.88