



Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: MEDALLION CORPORATION v Shurland, 2023 ONLTB 37520

Date: 2023-05-15

File Number: LTB-L-036301-22-RV

In the matter of: 140, 195 WELLINGTON ST S
HAMILTON ON L8N2R7

Between: MEDALLION CORPORATION Landlord

And

Merv Shurland Tenant

Review Order

MEDALLION CORPORATION (the 'Landlord') applied for an order to terminate the tenancy and evict Merv Shurland (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-036301-22 issued on March 27, 2023.

On March 28, 2023, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On March 30, 2023 interim order LTB-L-036301-22-RV-IN was issued, staying the order issued on March 27, 2023.

The review was heard by videoconference on April 20, 2023.

The Landlord's Representative Marija Jelic, the Tenant, and the Tenant's Representative Arahna Mahajan attended the hearing.

Determinations:

The Review Request

1. The Tenant alleged that he was not reasonably able to participate in the proceedings.
2. The Landlord consented to the Tenant's review request.
3. On the basis of the consent to the review, I granted the Tenant's review request, and the hearing proceeded *de novo*.



The L1 Application

Validity of the N4 Notice

4. The Landlord served the Tenant with a Notice to End Tenancy Early for Non-payment of Rent (N4 Notice).
5. The N4 Notice was served April 12, 2022 and it states that the Tenant owed \$686.35 for April 2022.
6. The Tenant submits that the N4 is invalid because it states that he only paid \$8.26 for the rent period of April 2022, but he actually paid \$694.61 on April 1, 2022.
7. The Landlord agrees that the Tenant paid \$694.61 on April 1, 2022 but says that was applied to previous arrears.
8. To determine the validity of the N4 I have to go back to July 2021. In June 2021 the Tenant had no outstanding rent arrears. However, in July 2021 they did not pay any rent. After that the Tenant made a monthly rent payment from August 2021 to April 2022. However, the missed payment was never made up for and the Tenant carried an outstanding balance of one month's rent in the amount of \$686.38.
9. In March 2022 the rent was increased to \$694.61.
10. Throughout the period from July 2021 to April 2022 the Landlord applied all rent payments to the oldest arrears. The Tenant's payment of \$694.61 on April 1, 2022 was applied to the still outstanding \$686.38 balance that had never been cleared. As such the only actual payment that went towards April 2022 rent was the difference in the rent increase of \$8.26.
11. This means that the N4 states accurately what was paid for the rental period of April 2022 and states accurately what the amount of outstanding arrears was: \$686.35. Section 59(2) of the *Residential Tenancies Act, 2006* ("the Act") says that a notice of termination for non-payment of rent shall set out the rent due. The Landlord's N4 did that accurately and thus is in compliance with the Act.
12. The Tenant submits that the N4 is invalid because it is confusing because you would not know looking at it that the arrears issue started back in July 2021. As such when the Tenant received the N4 notice for April 2022 he was confused because he had already paid rent in April 2022. I do not agree with this argument because absent express instructions a landlord can apply rent payments to the oldest arrears. That the Tenant forgot that he did not pay rent in July 2021 does not mean that the Landlord's N4 is confusing such to make it invalid. July 2021's rent was covered by the payment in August 2021 and August 2021 rent was covered by the payment in September 2021 and so on and so forth. The Landlord's N4 is an accurate statement of what was outstanding for April 2022 at the time the N4 was issued.

N4 Notice Void

13. Pursuant to section 59(3) an N4 notice is void if before the landlord applies to the Board, the tenant pays off all outstanding arrears.



14. The Tenant submits that they made a payment of \$694.61 on April 28, 2022. The outstanding balance of that time was \$686.35 and as such that payment would void the N4 Notice. The Landlord submits that the payment made on April 28, 2022 did not clear until May 2, 2022 at which time May 2022 rent had come due, so the Tenant did not void the notice.
15. On a balance of probabilities, I find that the payment was made on April 28, 2022, and not May 2, 2023. This is because the Tenant's banking documents supports that is when the payment is made, and the Landlord was not able to offer any explanation for why the payment may have been delayed. As such the Tenant voided the N4 notice on April 28, 2022.

Converting the L1 Application to an L9 Application

16. In the event that I found the N4 notice to be either void or invalid the Landlord requested to convert their application to an arrears only application.
17. The Landlord's application was filed June 28, 2022 and at that time the Tenant was in arrears again. This is because the payment made on April 28, 2022 was applied towards the April 2022 rent which brought the balance to zero, but then the Tenant did not make another payment until June 2022. This means that the Tenant continues to carry a one month rent balance.
18. The Landlord's request to covert their application to an arrears only application is granted.

Arrears of Rent up to April 30, 2023

19. The Landlord served the Tenant with an N1 notice of rent increase that their rent would increase to 711.97 as of March 1, 2023. The Tenant alleges that he did not receive notice of the increase, however I find the Landlord's records to be reliable that they did provide the Tenant with 90 days notice of the increase. As such the lawful rent as of March 1, 2023 is 711.97.
20. The rent arrears owing to April 30, 2023 are \$721.07. This includes the \$686.38 balance that has been carried for some time, plus two months of the \$17.36 increase which has not been paid.
21. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
22. The Tenant requests that they be permitted to pay off the outstanding arrears in \$100.00 installments. The Landlord was not opposed to that request. I find that request to be reasonable.

It is ordered that:

1. The request to review order LTB-L-036301-22 issued on March 27, 2023 is granted.
2. Order LTB-L-036301-22 issued on March 27, 2023 is cancelled and replaced by the following:



3. The Tenant shall pay to the Landlord \$907.07. This amount includes rent arrears owing up to April 30, 2023 and the cost of the application. The Tenant shall pay that amount in accordance with the following schedule:
 1. On or before June 15, 2023 a payment of \$100.00;
 2. On or before July 15, 2023 a payment of \$100.00;
 3. On or before August 15, 2023 a payment of \$100.00;
 4. On or before September 15, 2023 a payment of \$100.00;
 5. On or before October 15, 2023 a payment of \$100.00;
 6. On or before November 15, 2023 a payment of \$100.00;
 7. On or before December 15, 2023 a payment of \$100.00;
 8. On or before January 15, 2024 a payment of \$100.00;
 9. On or before February 15, 2024 a payment of \$100.00;
 10. On or before March 15, 2024 a final payment of \$7.07.

4. If the Tenant does not pay the Landlord the full amount owing on or before payment date the Tenant will start to owe interest. This will be simple interest calculated from the day after the payment was due at 6.00% annually on the balance outstanding.

May 15, 2023
Date Issued

Amanda Kovats
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.