



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

Citation: Killam Apartment REIT v Brandon Stoneham, 2023 ONLTB 34703

Date: 2023-05-02

File Number: LTB-L-058383-22

In the matter of: 703, 266 BRONSON AVE
OTTAWA ON K1R6H8

Between: Killam Apartment REIT Landlord

And

Brandon Stoneham Tenant

Killam Apartment REIT (the 'Landlord') applied for an order to terminate the tenancy and evict Brandon Stoneham (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on April 25, 2023.

Only the Landlord attended the hearing. The Landlord was represented by Donna Dames.

As of 9:38am, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

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. The Tenant was in possession of the rental unit on the date the application was filed.
3. At the hearing, the Landlord's uncontested evidence was the building changed ownership on April 1, 2023 and while the last month rent deposit was transferred to the new Landlord, the arrears owing to the period ending March 31, 2023 were not.
4. As such, the Landlord seeks an order for the arrears and costs owing to March 31, 2023.
5. The lawful rent is \$1,296.62. It is due on the 1st day of each month.
6. The Tenant has paid \$6,325.00 to the Landlord since the application was filed.

7. The rent arrears owing to March 31, 2023 total \$2,624.86.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord seeks an order for the arrears and costs with interest payable after 21 days.
10. The definition of “landlord” in subsection 2(1) of the Act reads as follows:

“landlord” includes:

- a. the owner of a rental unit or any other person who permits occupancy of a rental unit, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit,
 - b. the heirs, assigns, personal representatives and successors in title of a person referred to in clause (a), and
 - c. a person, other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent;
11. Section 18 of the Act says: “Covenants concerning things related to a rental unit or the residential complex in which it is located, run with the land, whether or not the things are in existence at the time the covenants are made.” It is commonly accepted that what this provision means is that when a property is sold and there are sitting residential tenants, the tenancy agreements “run with the land” meaning they remain in place on the same terms and conditions as existed prior to the sale. The new owner steps into the shoes of the old landlord.
 12. The primary purpose of the provision was to abolish the common law distinction between covenants in esse (which ran with the land) and covenants in posse (which did not). At common law examples of covenants which have always been said to run with the land include the obligation to pay rent and the landlord’s obligation to provide the tenant with quiet enjoyment. As a result of section 18 of the Act it is quite commonplace for successor landlords to bring applications for arrears of rent where the arrears of rent owing cover the period both before (that they have inherited) and after the sale.
 13. In this case, based on the evidence before the Board I find that the applicant Landlord is entitled to an order for the arrears that are owing to them. I say this because at the time the application was filed, on October 7, 2022, the former Landlord was still the Landlord in accordance with the definition under the Act. Further, the arrears being claimed by the (now) former Landlord are owed to them and have not transferred to the new Landlord.
 14. An order shall issue accordingly.
 15. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

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1. The Tenant shall pay to the Landlord \$2,810.86. This amount includes rent arrears owing up to March 31, 2023 and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
2. If the Tenant does not pay the Landlord the full amount owing on or before May 23, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 24, 2023 at 6.00% annually on the balance outstanding.

May 2, 2023 Date
Issued

Sonia Anwar-Ali
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.

2023 ONL TB 34703 (CanLI)

Schedule 1
SUMMARY OF CALCULATIONS

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

Rent Owing To Move Out Date	\$8,949.86
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$2,810.86