



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

Citation: Gyuk c/o Tribond Property Management Inc. v Stone, 2023 ONLTB 32814

Date: 2023-05-02

File Number: LTB-L-048434-22

In the matter of: 2, 55 DUNDAS ST W
NAPANEE ON K7R1Z5
Between: Andrew Gyuk c/o Tribond Property Landlord
Management Inc.

And

Angel Stone

Tenant

Andrew Gyuk c/o Tribond Property Management Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Angel Stone (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 27, 2023.

The Landlord's legal representative, James Moak, 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 \$1,265.51. It is due on the 1st day of each month.
4. The Tenant has paid \$11,213.00 to the Landlord since the application was filed.
5. After the application was filed, on March 21, 2023 the Tenant paid \$1,232.00 into the Board in trust.
6. The rent arrears owing to March 31, 2023 are \$(5.99). Given that the rent arrears have been paid in full, the tenancy will not be terminated.
7. At the hearing, the Tenant argued that she lawfully withheld her rent for the month of June 2022 pursuant to section 12.1 of the Residential Tenancies Act, 2006 (the 'Act'), and that she is not obligated to repay that amount withheld.

8. The tenancy commenced in November 2018. The tenancy was commenced between the Tenant and a different landlord. The Landlord became the Tenant's landlord with respect to the rental unit in June 2021.
9. The Tenant stated at the hearing that she withheld the rent for June 2022 because the tenancy agreement that she entered was not written or in the Board's standard form as required by subsection 12.1(1) of the Act. That provision requires every tenancy agreement entered after the prescribed date with respect to a tenancy of a prescribed class to be in the form prescribed for that class.
10. The date prescribed relative to subsection 12.1(1) at section 2 of O. Reg. 9/18 is April 30, 2018. The prescribed class of tenancy that is covered is all tenancies for occupancy of accommodation with respect to which all or part of the Act, other than Part V.1, applies, except for a list of specific exemptions. This tenancy does not fall within that list of exemptions. I therefore find that subsection 12.1(1) applies to this tenancy. The tenancy agreement was required to be in the prescribed form.
11. Pursuant to subsection 12.1(4) of the Act, subsections 12.1(5) to (10) apply to a tenancy agreement where subsection 12.1(1) applies but the tenancy agreement does not comply with that subsection. The Tenant's uncontested evidence was that her tenancy agreement was oral. The tenancy agreement therefore did not comply with subsection 12.1(1).
12. Where a tenant of a rental unit is party to a tenancy agreement where subsection 12.1(1) applies but the agreement does not comply with that subsection, the tenant may, one time during the tenancy, demand in writing that the landlord provide to the tenant, for the tenant's signature, a proposed tenancy agreement. The proposed tenancy agreement must comply with subsection 12.1(1), be for occupancy of the same rental unit, and be signed by the Landlord.
13. Under subsection 12.1(6), if at least 21 days have elapsed since the day the tenant made the demand in writing that the Landlord provide a proposed tenancy agreement and the landlord has not complied with the demand, the tenant may, subject to subsections 12.1(7) and (8), withhold rent payments that become due after the expiry of that 21 day period.
14. Subsections 12.1(7) and (8) limit the total amount of rent payments that may be withheld to the equivalent of one month's rent, and prohibit the withholding of rent on or after the date the landlord complies with the demand.
15. The first issue that must be determined is whether the Tenant made a demand in writing for a proposed tenancy agreement at least 21 days before she withheld the rent for June 2022. That rent was due, and therefore withheld, on June 1, 2022. The demand in writing must therefore have been made by May 11, 2022.
16. The Tenant stated at the hearing that she made the demand for a proposed tenancy agreement numerous times, and she filed numerous documents in support of her assertion. Many of these documents were screenshots of text messages between the Tenant and Landlord. The Tenant, however, did not refer me to any text message, or other written document, where she demands a proposed tenancy agreement on or before May 11, 2022. The Tenant did submit text messages sent after June 1, 2022 where the Tenant demanded a proposed tenancy agreement.

17. In order to prove a fact on a balance of probabilities, a party must provide clear, convincing, and cogent evidence of the fact to be proven.¹ The Tenant did not provide a copy of any written demand for a proposed tenancy agreement that was made on or before May 11, 2022, and also did not provide specific oral evidence as to exactly when and how any such demand was made. In the absence of such clear, convincing, and cogent evidence, I am not satisfied on a balance of probabilities that such a demand was made within the relevant timeframe. The Tenant was therefore not entitled to withhold the rent for June 2022.
18. The Tenant did demand a proposed tenancy agreement after June 1, 2022. For example, she provided several screenshots of text messages where such a demand was made as early as June 8, 2022. That may have entitled her to withhold her rent for July 2022 if the Landlord failed to comply with the demand, but did not entitle her to withhold rent for June 2022. The evidence of the Tenant was that on June 30, 2022 an agent of the Landlord advised the Tenant that a copy of a proposed tenancy agreement was available for the Tenant at the Landlord's office and shortly after that a different agent of the Landlord also delivered a copy of the proposed tenancy agreement to the Tenant.
19. The Tenant did not sign the proposed tenancy agreement because she did not agree with some of its terms. Even if the Tenant had withheld the rent for July 2022 instead of June 2022, the Landlord would be entitled to require repayment of the withheld rent. Under subsections 12.1(9) and (10), a landlord may require a tenant to repay withheld rent even if the Tenant does not sign the proposed tenancy agreement as long as the landlord complies with the Tenant's demand for a proposed tenancy agreement no later than 30 days after the date the first payment was withheld.
20. I therefore find that the Tenant was in arrears of rent at the time the application was filed. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
21. Taking into account the Tenant's payment into the Board, she does not have any rent arrears. She owes the Landlord only part of the application filing fee.

It is ordered that:

1. The Tenant shall pay the Landlord \$180.01. This is the amount the Tenant owes the Landlord for the application filing fee, less the \$5.99 credit on the Tenant's account. See schedule 1 for a calculation of this amount.
2. The amount of \$1,232.00 paid into the Board by the Tenant shall be paid to the Landlord.
3. If the Tenant does not pay the full amount owing in paragraph 1 on or before May 31, 2023, then the Tenant will start to owe interest. This will be simple interest calculated at a rate of 6.00% annually on the balance outstanding.

May 2, 2023

Date Issued

Mark Melchers
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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on November 14, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

*Note: When the Board 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 to void the eviction order and continue the tenancy if the payment is made on or before May 13, 2023

Rent Owing To March 31, 2023	\$12,439.01
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$11,213.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$1,232.00
Total the Tenant must pay to continue the tenancy	\$180.01