



Order under Section 69 Residential Tenancies Act, 2006

Citation: Warmington v Dart, 2023 ONLTB 30948

Date: 2023-04-25

File Number: LTB-L-003083-23

In the matter of: 1209 Whitefield Drive
Peterborough Ontario K9J7R7

Between: Corinne Warmington, Carrie Warmington and Tyler Warmington Landlords

And

Garnet Miles and Natasha Dart Tenants

Corinne Warmington, Carrie Warmington and Tyler Warmington (the 'Landlords') applied for an order to terminate the tenancy and evict Garnet Miles and Natasha Dart (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

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

The Landlords, Carrie Warmington ('CaW') and Corinne Warmington ('CoW'), and the Tenants, Garnet Miles ('GM') and Natasha Dart ('ND') attended the hearing.

Preliminary Issues:

1. The Landlords served each Tenant with a separate Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The N4 Notice given to each Tenant named only that Tenant, and not both of them.
2. Both versions of the N4 Notice that were served suffered from the same defect. The amount of rent arrears claimed on the first page of both N4 Notices was \$4,700.00. The amount of rent arrears claimed on the second page of both N4 Notices was \$7,000.00.
3. A landlord is entitled to serve an N4 Notice on a tenant who is in arrears of rent under sections 59 of the *Residential Tenancies Act, 2006* (the 'Act'). Subsection 59(2) of the Act requires that a notice served under section 59 correctly identify the amount of rent due, and it must also specify that the tenant may avoid the termination of the tenancy by paying the rent due by the termination date set out in the notice. Because the amounts claimed on the first and second pages of both N4 Notices were different, I find that the N4 Notices failed to satisfy these requirements. The discrepancy between the amounts claimed on the first and second pages made the N4 Notices confusing because it was not clear how much rent the Landlords were claiming to be due, and it was therefore also not clear how much money the Tenants would have to pay the Landlords to void the N4 Notices.

4. For these reasons, I find that the N4 Notices given to the Tenants are invalid. I explained this to CoW and CaW at the hearing, and the Landlords decided to proceed with the hearing of their application to seek an order for the rent arrears to be paid, but not for termination of the tenancy.

Determinations:

5. As of the hearing date, the Tenants was still in possession of the rental unit.
6. The lawful rent is \$2,300.00. It is due on the 1st day of each month.
7. The Tenants have paid \$1,950.00 to the Landlords since the application was filed.
8. The parties agreed that the rent arrears owing to March 31, 2023 are \$18,850.00.
9. The Landlords incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
10. The Tenants raised the issue of whether they are tenants in common or joint tenants. In a joint tenancy, there is a single tenancy agreement and the tenants are jointly and severally (together and individually) liable for the payment of the entire rent for the rental unit. In a tenancy in common, more than one tenant occupies the same premises, and each tenant has a separate tenancy agreement with the landlord, even if the they signed a single tenancy agreement document. Each tenant in a tenancy in common is individually responsible for the payment of only their share of the rent for the rental unit.
11. Tenant Duty Counsel made a brief submission about this issue after speaking with ND. The Tenants' submission about this issue was that this is a tenancy in common because there are several indicia of a tenancy in common as opposed to a joint tenancy. In particular, they pay their rent separately, including paying separate amounts, and each of the Tenants was given their own N4 with only their respective names identified as Tenants. However, I note that the two N4 Notices were identical apart from the named Tenant on each. The amount of rent arrears owing was not divided between the Tenants.
12. In response to the Tenants raising this issue, I asked the Landlords to submit a copy of the written lease agreement to the Board, and to also email a copy to each of the Tenants.
13. Upon review of the written tenancy agreement, which both Tenants signed, and hearing the evidence of both parties, I find that the real substance of this tenancy is that it is a joint tenancy. The rent is set on the second page of the tenancy agreement at \$2,300.00 per month. This is the rent for the entire rental unit, and there are not separate amounts identified that each Tenants is responsible for. There is no term in the tenancy agreement suggesting that this is a tenancy in common. Significantly, clause 15 on page 6 of the tenancy agreement states "[a]ny or all Tenants signing this lease take full responsibility for all terms and conditions".
14. While the Tenants may have decided to pay their portions of the rent separately, there was no evidence that the Landlords and Tenants made an agreement to amend the tenancy agreement to create a tenancy in common. I therefore find that that is a joint tenancy, and both Tenants are responsible (together and individually) for payment of all of the rent and arrears of rent.

It is ordered that:

1. The Tenants shall pay to the Landlords \$19,051.00 for arrears of rent and costs. This amount includes rent arrears owing up to March 31, 2023 and the cost of filing the application.
2. If the Tenants do not pay the Landlords the full amount owing on or before May 6, 2023, the Tenants will start to owe interest. This will be simple interest calculated from May 7, 2023 at 6.00% annually on the balance outstanding.

April 25, 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.