



Order under Subsection 87(1) Residential Tenancies Act, 2006

Citation: Williams & McDaniel Property Management v Fenn, 2023 ONLTB 30543

Date: 2023-04-11

File Number: LTB-L-011373-23

In the matter of: 107, 397 Railway Avenue
Stratford ON N5A2J3

Between: Williams & McDaniel Property Management Landlord

And

James Fenn Tenant

Williams & McDaniel Property Management (the 'Landlord') applied for an order requiring James Fenn (the 'Tenant') to pay the rent that the Tenant owes.

The Landlord also claimed charges related to NSF cheques.

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

Only the Landlord's legal representative, Tim Kelly ('TK'), attended the hearing.

As of 1:59 pm., 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 Tenant vacated the rental unit on December 31, 2022. TK stated that the Tenant surrendered the keys and possession of the rental unit to the building manager on this date. The Tenant was in possession of the rental unit on the date the application was filed.
2. TK gave evidence that the Tenant initially gave the Landlord notice on November 13, 2022 indicating that he wished to vacate on November 30, 2022. The Landlord gave the Tenant a letter dated November 17, 2022 advising the Tenant that the Landlord would not accept this notice because it was given less than 60 days prior to the purported termination date, but that the Landlord would try to rent the rental unit to another Tenant for December 1, 2022. The Tenant did not vacate on November 30, 2022, but rather vacated on December 31, 2022.
3. TK stated that the Landlord was not able to rent the rental unit to another Tenant in January 2023 because the Tenant left the rental unit in a bad state, which required extensive cleaning and repairs. The Landlord tried to re-rent the unit in January 2023 but was not able to do so.

4. Based on TK's uncontested evidence, I am satisfied that the tenancy was not terminated in a manner permitted by the *Residential Tenancies Act, 2006* (the 'Act') prior to or at the time of the Tenant vacating the rental unit on December 31, 2022. I am also satisfied that the Landlord mitigated its losses to January 31, 2023 and it entitled to the rent up to that date pursuant to section 88 of the Act.
5. The Tenant did not pay the total rent they were required to pay for the period from December 1, 2022 to January 31, 2023.
6. The lawful rent was \$1,153.20. It was due on the 1st day of each month.
7. The Tenant has not made any payments since the application was filed.
8. The Landlord is entitled to \$20.00 to reimburse the Landlord for administration charges the Landlord incurred as a result of 1 cheque given by or on behalf of the Tenant which were returned NSF.
9. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
10. The Landlord collected a rent deposit of \$1,115.00 on November 22, 2018 and is still holding this deposit. \$68.93 is owing to the Tenant for interest on the rent deposit for the period from November 22, 2018 to March 27, 2023.

It is ordered that:

1. The Tenant shall pay to the Landlord \$1,343.47. This amount includes rent arrears owing up to January 31, 2023, the cost of the application and unpaid NSF charges, minus the rent deposit and interest owing.
2. If the Tenant does not pay the Landlord the full amount owing on or before April 22, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 23, 2023 at 6.00% annually on the balance outstanding.

April 11, 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.