



Order under Section 69 of the Residential Tenancies Act, 2006

Citation: 869797 Ontario Ltd v Rodrigues, 2023 ONLTB 28946

Date: April 6, 2023

File Number: LTB-L-004667-22

In the matter of: 10, 578 Colborne Street
London, ON N6B 2T8

Between: 869797 Ontario Ltd Landlord

and

Jerry Rodrigues Tenant

869797 Ontario Ltd (the 'Landlord') applied in a L1 application for an order to terminate the tenancy and evict Jerry Rodrigues (the 'Tenant') because the Landlord claimed that the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on August 2, 2022 but unfortunately an order was not issued.

A *de novo* (new) hearing was heard by videoconference on March 24, 2023. The Landlord's agent Sally Anastasiadis attended the hearing on behalf of the Landlord. As of 9:52am (the hearing started at 9am), the Tenant was not present or represented at the hearing although properly served with notice of the hearing. Since no request to adjourn or reschedule had been received by the Board from the Tenant before the hearing, the hearing occurred with only the Landlord's evidence as allowed by section 7 of the *Statutory Powers Procedure Act*.

Determinations:

Preliminary Issue: Tenant Served with Notice of Hearing

1. The Landlord's agent advised that the Tenant no longer lived at the rental unit address of unit 10, 578 Colborne Street in London, Ontario, because a fire occurred there on or about September 28, 2022.
2. She submitted that the Tenant had been moved to Unit 5 at 572 Colborne Street in London, Ontario, which is another premises owned by the Landlord. The Tenant continues not to pay any rent at the new address.
3. I note that the Board only served the Tenant with the Notice of Hearing by mailing it to the Tenant on February 28, 2023 to the rental unit address where the fire occurred.
4. Normally, I would have found that the Tenant did not receive proper notice about this hearing, so I would have adjourned the hearing to allow the Tenant to be served with notice. However, the Landlord's agent submitted that after she received the Notice of Hearing (which Board records show were emailed to her on February 27, 2023), she printed it and hand-delivered it to the Tenant on March 6, 2023. She also delivered it

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again on March 22, 2023 only a couple days before the hearing. She wanted to ensure the Tenant knew about the hearing.

5. I found the Landlord's agent's evidence credible and reliable; thus I find that the Tenant did have adequate notice about this hearing, and the hearing was conducted in the Tenant's absence.

Preliminary Issue – Tenancy Agreement Frustrated

6. Based on the Landlord's agent's testimony that a fire caused the Tenant to be re-housed in an adjacent building, I find that the tenancy agreement was frustrated for the rental unit address that is the subject of the N4 Notice of Termination and this L1 Application.
7. Section 2(1) of the *Residential Tenancies Act* (the 'Act') defines "tenancy agreement" as a written, oral or implied agreement between a tenant and a landlord for occupancy of a rental unit. The Landlord's agent advised no new written lease was signed when the Tenant moved after the fire. The parties agreed he will continue paying the same amount of rent.
8. "Rental unit" is defined in section 2(1) of the Act as being any living accommodation used or intended for use as rented residential premises.
9. Even though the relationship between the Landlord and Tenant continued after the fire, and even though the Landlord was trying to meet their due diligence to provide alternate living arrangements for the Tenant since the fire made his first rental unit uninhabitable, the fact remains that when the Tenant moved to another building, this was a change to the "rental unit" and a totally different premises from the one which the Landlord served the N4 Notice under and for which this L1 Application seeking eviction and rent arrears is based.
10. I find that when the Tenant moved after the fire, it started a new oral or implied tenancy between the Landlord and Tenant, at the new rental address of Unit 10, 572 Colborne St.
11. Therefore, the Landlord's application seeking eviction from the old address is moot since no eviction is required. As for the new address, no valid Notice of Termination was ever served on the Tenant for the new address, so eviction cannot be sought.
12. In essence, the Tenant vacated the first rental unit after the fire. Therefore, only the rent arrears which accrued up to the date of vacate can be issued in this Application.
13. The Landlord's agent may wish to seek legal advice regarding how to claim rent arrears and eviction for the new rental address.

L9 Application for Rent Arrears Only

14. Since the original tenancy agreement for Unit 10 in 578 Colborne St was frustrated due to the rental unit being damaged by fire, this Application is amended from a L1 to a L9 Application for rent arrears only.
15. Rule 1.6(h) allows the Board to amend an application on its own motion where appropriate, on notice to the parties. I find there would be no prejudice to either party to amend the application to a L9.

16. 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.
17. The eviction portion of the L1 Application became moot when the Tenant vacated the rental unit, since the Landlord would not longer require a Board order to evict the Tenant from the rental unit (since he voluntarily moved out when the fire damaged the rental unit).
18. The Tenant was in possession of the rental unit when the L1 Application was filed on January 26, 2022.
19. The Tenant vacated the rental unit on or about September 28, 2022. Rent arrears are calculated up to the date the Tenant vacated the unit.
20. The Tenant made no payments to the Landlord between when the L1 application was filed and the hearing on March 24, 2023.
21. On October 1, 2021, the Landlord collected a last month's rent deposit of \$480.00 and this amount is still being held by the Landlord. The last month's rent deposit is to be applied to the last month of the tenancy.
22. Interest on the rent deposit is owing to the Tenant from the date of collection (October 1, 2021) to the termination date in the N4 Notice of Termination (January 18, 2022).

It is ordered that:

23. The tenancy between the Landlord and the Tenant is terminated as of September 28, 2022, the date the Tenant gave vacant possession of the rental unit to the Landlord.
24. The Tenant shall pay to the Landlord **\$5,427.56***. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. (See Schedule 1 Summary of Calculations)
25. If the Tenant does not pay the Landlord the full amount owing of \$5,427.56 on or before April 17, 2023 (standard 11 days from the issuance date of this order), the Tenant will start to owe interest. This will be simple interest calculated from April 18, 2023 at 6.00% annually on the balance outstanding.

April 6, 2023
Date Issued

Michelle Tan
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.

**Schedule 1
SUMMARY OF CALCULATIONS**

Amount the Tenant must pay as the tenancy is terminated

Rent Owing To Move Out Date	\$5,721.84
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$480.00
Less the amount of the interest on the last month's rent deposit	- \$0.28
Total amount owing to the Landlord	\$5,427.56*

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