



Order under Section 69 Residential Tenancies Act, 2006

Citation: Galaxy Value Add Ontario Properties LP v Knowles, 2023 ONLTB 26387

Date: 2023-03-27

File Number: LTB-L-007222-22

In the matter of: 0804, 1200 TALWOOD CRT
PETERBOROUGH ON K9J7X3

Between: Galaxy Value Add Ontario Properties LP Landlord

And

Jett Estey and Tomisina Knowles Tenants

Galaxy Value Add Ontario Properties LP (the 'Landlord') applied for an order to terminate the tenancy and evict Jett Estey and Tomisina Knowles (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on January 5, 2023.

The Landlord's representative J Shabes and the Tenants attended the hearing.

Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenants 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 Tenants were still in possession of the rental unit.
3. The lawful rent is \$1,396.25. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$45.90. This amount is calculated as follows: \$1,396.25 x 12, divided by 365 days.
5. The Tenants have paid \$15,309.70 to the Landlord since the application was filed.

Arrears of rent

1. The Landlord's representative asserts that there are arrears of rent in the amount of \$2,077.82 owing to January 31, 2023. The Landlord's representative said that the arrears of rent include January 2023 rent and partial rent from May 2022. The Landlords' representative stated that the history of the rent arrears was as follows:
 - Previously there were rent arrears owing up to April 30, 2022 and the Tenants made a payment at the end of April that year, likely for May's rent. When that payment was made at the end of April, the Landlord applied part of that payment to the Tenants' outstanding rent arrears and the balance of that payment was credited towards the Tenants' May rent.
 - In April 2022, the Landlord had an L1 Application filed with the Board on the basis of an N4 Notice of Termination for arrears of rent (TEL-12976-20). The Tenants' payment at the end of April was applied to clear the Tenants' rent arrears and caused the discontinuance of that L1 application to April 30, 2022.
 - However, as a part of that late April payment was applied to the arrears outstanding to April 30th, that left May's rent not fully paid.
 - The Landlord's representative advised that these are the arrears that they are seeking, in addition to January 2023's rent, which has not yet cleared their account.
2. The Tenants testified that they have paid their lawful monthly rent in full and that the arrears are an administrative error which occurred when the management company for the Landlord changed. They testified that they have proof of payment of rent for every month and had receipts to demonstrate this. The Landlord's representative did not dispute that rent was paid each month, only that there were outstanding arrears from May onwards due to the prior April arrears, and that has carried forward. The Tenants had no evidence to demonstrate that the rent arrears that were ordered in April 2022 were paid by way of a payment separate or independent to the "pre-payment" of May's rent.
3. On the basis of the evidence before me, I find that the rent arrears owing to April 30, 2022 were paid through the use of the Tenants' "pre-paid May rent"; the payment that they made in late April to the Landlord. I find that this resulted in a partial rent payment for the month of May 2022.
4. In the case *Malva Enterprises Inc. v. Rosgate Holdings Ltd.*, 1993 O.J. No. 1724 the Court of Appeal found that a landlord is permitted to apply any payments received from a tenant to extinguish rent arrears. The Court stated as follows:

When a debtor is making a payment to his creditor, he may appropriate the money as he pleases, and the creditor must apply it accordingly. If the debtor does not make any appropriation at the time when he makes the payment the right of application devolved on the creditor.

With respect to the payment of rent in a landlord and tenant relationship the application of rental payments may be controlled by a direction from the tenant or

the contract or custom of the parties. In the absence of any direction from the tenant as to the application of a voluntary payment as between a number of claims for rent, the landlord may ordinarily apply the payment to whichever claim he pleases.

Payments made by a tenant to his landlord on account of rent in the absence of any direction by the tenant or any agreement of the parties generally may, and according to some authorities, will be applied to the extinguishment of the rents first accrued.

5. I find that this is what happened in the present case. The Landlord applied the May rent payment to the rent arrears owing by the Tenants, leaving the May's rent payment short.
Although the Tenants argue that the payment made at the end of April should have been applied to the rent for May, the Tenants led no evidence that there was a designation of the payment, solely for the allocation of payment to the month of May. As a result, the Landlord has the right to allocate the payment to arrears first and then the balance to rent payments.
6. On the evidence before me, I find that there are rent arrears owing to January 31, 2023 in the amount of \$2,077.82.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,354.80 from the Tenants and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
9. Interest on the rent deposit, in the amount of \$12.34 is owing to the Tenants for the period from January 1, 2021 to January 5, 2023.

Harassment Claim

10. The Tenants asserted that the Landlord was harassing them by serving this N4 notice of termination however the Tenants failed to raise the issues on notice pursuant to section 82 of the Act and in accordance with the Rules of the Board. The Tenants were advised as the matter was not previously disclosed it would not be heard and they could file an application with the Board to address the matter in the future if they chose to do so.

Relief from Eviction

11. The Landlord's representative sought an order to terminate the tenancy due to the arrears of rent and stated the Landlord would not object to a standard order with an extended termination period of 30 days.
12. The Tenants requested to maintain their tenancy as they had paid the January 2023 rent and the arrears were minimal and could be paid. The Tenants stated that they would be able to obtain assistance from their Case Manager for payment of the outstanding arrears. The Tenants also testified that Tenant J Etsey is disabled and currently receives disability

support payments and this would make it difficult to move and find alternative affordable housing.

13. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to grant relief from eviction subject to the condition set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act. As the arrears of rent are not substantial and the amount can be paid by the Tenants in a short period of time, I find that there is no prejudice to the Landlord for a brief payment period.

It is ordered that:

1. The Tenants shall pay to the Landlord \$2,263.82, which represents the arrears of rent and costs outstanding for the period ending January 31, 2023.
2. The Landlord's application for eviction of the Tenants is denied on the condition that:
 - a. The Tenants shall make the following payment to the Landlord in respect of the monies owing under paragraph 1 of this order: The Tenants shall pay \$2,263.82 to the Landlord on or before June 15, 2023.
3. If the Tenants fail to make the payment in accordance with paragraph 2, and by the date required, then:
 - a. The Landlord may apply under section 78 of the Act for an order terminating the tenancy and evicting the Tenants and for the payment of any new arrears of rent and NSF charges not already ordered under paragraph 1 of this order. The Landlord must make the application within 30 days of a breach of a condition set out in paragraph 2 of this order.
 - b. The balance owing under paragraph 1 of this order shall become payable on the day following the date of default. The monies owing shall bear interest at the postjudgement interest rate determined under subsection 207(7) of the Act.

March 27, 2023

Date Issued

Heather Kenny

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.