



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

Citation: NMR Properties v Marie, 2023 ONLTB 25968

Date: 2023-03-10

File Number: LTB-L-017229-22

In the matter of: 1, 348 SPADINA RD
TORONTO ON M5P2V4

Between: NMR Properties Landlord

And

Anne Marie Tenant

NMR Properties (the 'Landlord') applied for an order to terminate the tenancy and evict Anne Marie (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 11, 2022.

The Landlord, Landlord's representative Katherine Wauthier 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 \$1,290.30. It is due on the 1st day of each month.
4. The Tenant has not made any payments since the application was filed.
5. The Landlord collected a rent deposit of \$1,275.00 from the Tenant 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.

Defective N4 Notice of Termination

6. At the hearing, a preliminary issue arose concerning the validity of the N4 Notice of Termination ('N4 notice'). The Landlord was asked why the "Rent Period, Rent Charged, Rent Paid, and Rent Owing" on page 2 of the N4 Notice was left blank, and Tenant's name on page 1 did not include her last name.

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7. The Landlord submitted that it was indicated on page 2 of the N4 Notice that the Tenant should refer to the attached statement for details. The Landlord also submitted that this was a typo that the Tenant's last name was not on the N4 Notice but included on the attached statement.
8. As the Landlord's N4 notice does not set out the correct amount charged and is requiring the Tenant to pay more than the Landlord is lawfully entitled to, the notice does not comply with section 59(2) of the Residential Tenancies Act, 2006 (Act). As the N4 notice is defective the Board does not have the authority to terminate the tenancy.

Amending L1 Application to L9 Application for Arrears and Costs Only

9. As a result of the defects with the N4 Notice, the Landlord's representative was explained the options available as a result of the defective N4 including withdrawing the L1 application, serving a new N4 notice and filing a new application or proceeding with the current application to collect arrears of rent only pursuant to Section 87 (1) (a) of the Residential Tenancies Act, 2006 (the Act).
10. The Landlord's Agent was advised that the option to proceed with arrears of rent only would not result in a termination of tenancy should the Tenant breach, but rather would have to be enforced in another jurisdiction such as small claims court for collection of any outstanding funds owing. The Landlord's Agent was also advised that the Landlord would not be permitted to claim these arrears on a new N4 if the option to proceed with arrears only was selected.
11. The Landlord's representative requested that the matter proceed with claiming arrears of rent only and confirmed that he understood the remedies available should the Tenant not comply with the terms of the order.
12. The issue of amending an application was raised in the case *Nejad v Preddie*, 2016 ONSC 4348 (CanLII), where the Divisional Court upheld a Board decision allowing an application to proceed to collect arrears despite a defective N4 notice.
13. Further, section 201(1)(f) of the Act permits the Board to amend an application during a hearing, if the Board considers it appropriate to do so and if amending the application would not be unfair to any party. I consented to the request to amend the application as there is

no prejudice or unfairness to the Tenant since the N4 notice contemplates that arrears may be sought.

14. The Tenant did not dispute the rent arrears.
15. The Landlords also submitted L1 Application and L1 L9 Information update sheet which captured all the months of alleged rent owing and claimed up to the time of this hearing (to the period ending October 31, 2022).

It is ordered that:

1. The Tenant shall pay to the Landlord \$14,728.00, which represents the amount of rent owing up to October 31, 2022.
2. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.

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3. If the Tenant does not pay the Landlord the full amount owing on or before March 21, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 22, 2023 at 5.00% annually on the balance outstanding.

March 10, 2023

Date Issued

Percy Laryea

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.