



**Order under Section 69 and Section 31
Residential Tenancies Act, 2006**

Citation: BLAKE BLVD PROPERTIES LTD. v PETERSEN, 2022 ONLTB 14532

Date: 2022-12-28

File Number: LTB-L-074385-22
LTB-T-075971-22

In the matter of: 5, 297 BLAKE BOULEVARD
VANIER ONTARIO K1L6L6

Between: Blake Blvd Properties Ltd. Landlords
RealRent

And

Holly Petersen Tenants

Blake Blvd Properties Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Holly Petersen (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (the 'L1 application').

The Tenant also applied for an order determining that the Landlords harassed, obstructed, coerced, threatened or interfered with them (the 'T2 application').

These applications were heard by videoconference on May 25, 2022.

The Landlords attended the hearing and were represented by Nathan Rudner ('N.R.' or the 'property manager'). The Tenant ('H.P.' or the 'Tenant') attended the hearing and was self-represented.

Preliminary Issue

1. The Landlords' application originally named two tenants. However, Tenant, H.P., gave unchallenged evidence that the other named tenant vacated the rental unit on and around April 2019.
2. Section 87 of the *Residential Tenancies Act, 2006* (the 'Act') allows a Landlord to bring an application for arrears in respect of a tenant in possession of the unit or, in certain cases, within one year of the tenant vacating. Neither apply here to the second-named Tenant. The application is accordingly amended to remove the second-named Tenant as they are not a proper respondent.

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3. Similarly, to the extent that it is necessary, the Tenant's application is amended to reflect that the second-named Tenant is not a proper applicant. They are not listed as an applicant and the Landlords' impugned conduct took place well after the tenant vacated.

Determinations:

4. The rental unit is an apartment in an apartment building. The Landlords allege the Tenant failed to pay rent that the Tenant owes in contravention of the tenancy agreement.
5. The Tenant continues to reside in the rental unit. The only remedy being sought is a monetary one.
6. The Board's record contains an Interim Order dated February 3, 2022 adjourning a previously scheduled hearing on February 1, 2022, and directing the Tenants to pay rent to the Landlord, or the Board in trust, commencing February 15, 2022, and to continue to do so until the applications are resolved.
7. For reasons that follow, the L1 application is dismissed. The T2 application is granted in part.

THE L1 APPLICATION

8. The Landlords failed to give the Tenant a valid Notice to End Tenancy Early for Non-payment of Rent (the 'N4 Notice'). For reasons that follow the L1 application is dismissed.

Landlords' evidence

9. N.R. testified that he is the property manager and has direct knowledge of the issues in the applications. He testified that the Landlords served the N4 Notice to the Tenant on August 27, 2021, alleging that the Tenant owed \$1,905.00 in arrears reflecting unpaid rent that was due on July 1, 2021 and August 1, 2021. The termination date on the notice was September 10, 2021.
10. As the Tenant, in the view of N.R., did not void the N4 Notice by paying the alleged outstanding arrears, an L1 application was filed and, as of the date of the hearing, the Landlords alleged that the arrears have increased to \$6,559.73. N.R. confirmed that from February 10, 2022 through to April 29, 2022, the Tenant made payments of \$3,855.32 towards the balance, yet, an outstanding balance remains which is the basis for the Landlords' request for an order for eviction and the outstanding arrears.

Tenant's evidence

11. The Tenant disputes the Landlords' allegations. H.P. testified that they made all required rent payments according to the terms that were agreed upon at the outset of the tenancy—by e-transfer. The Tenant further testified that the Landlords rejected the e-transfers and attempted to unilaterally change the terms of the tenancy to prohibit them from paying their rent as agreed.

12. The Tenant entered into evidence screenshot images from a mobile phone application showing Interac e-transfer payments sent from the Tenant's account to the Landlords beginning on the following dates: (i) \$952.50 sent on April 30, 2021 for April 2021 rent; (ii) \$1,905.00 sent on June 7, 2021 for May 2021 and June 2021 rent; (iii) two separate, undated e-transfers made from a TD Unlimited Chequing account to RealRent for \$952.50 each, with attached messages of "July rent" and "August re-send sent"; (iv) messages confirming that multiple e-transfers were cancelled by the Landlords on September 13, 2021, September 29, 2021, September 30, 2021, October 1, 2021, and October 3, 2021; and, (v) an e-transfer sent on January 1, 2022 for \$963.20 on January 1, 2022.
13. The Tenant also directed the Board to a picture of a public notice posted within the residential complex issued by Realrent Property Management advising residents of rent payments options of "Pre-Authorized Debit", "E-transfer", and "Check or Bank Draft".
14. N.R. does not dispute that the Landlords changed their "policy" regarding how rent payments were accepted, stating that this was a decision the Landlords were required to make based on their commercial banking requirements. Notwithstanding, multiple options were presented to the Tenants to ensure they were able to pay their rent, which the Tenant declined to use. N.R. does not deny that the e-transfer payments were rejected, explaining that the Tenant was advised that these payments would be rejected and directed her to alternative, acceptable payment options.
15. Both parties directed the Board to a series of email communications between them dated from April 29, 2021 through to February 10, 2022 which outlined the discussions they had that confirmed that the method of payment was in dispute, that e-transfer payments were made and cancelled by the Landlord, and the Tenant's objection to the Landlords changing the previously agreed upon method of paying rent via e-transfer that had been in place for some time before the dispute began.

Analysis

16. Subsection 2(1) of the *Residential Tenancies Act, 2006* (the 'Act') defines a 'tenancy agreement' as a written, oral or implied agreement between a tenant and a landlord for occupancy of a rental unit and includes a licence to occupy a rental unit.
17. Subsection 2(1) of the Act defines 'rent' to include the amount of any consideration paid or given or required to be paid or given by or on behalf of a tenant to a landlord or the landlord's agent for the right to occupy a rental unit and for any services and facilities and any privilege, accommodation or thing that the landlord provides for the tenant in respect of the occupancy of the rental unit, whether or not a separate charge is made for services and facilities or for the privilege, accommodation or thing.
18. Subsection 59(1) of the Act provides that a landlord may give a tenant a notice of termination of the tenancy if a tenant fails to pay rent lawfully owing under a tenancy agreement.
19. Subsection 69(1) of the Act provides that a landlord may apply to the Board for an order terminating a tenancy and evicting the tenant if the landlord has given notice to terminate the tenancy under the Act.

20. In *George V Apartments Ltd. v. Cobb*, [2002] O.J. No. 5981 (Ont. Div. Ct.), the Divisional Court held that a notice of termination which does not comply with the mandatory content requirements of the Act is void and cannot be amended or corrected.
21. Based on the evidence presented at the hearing, I am satisfied that the N4 Notice is defective because the Landlord improperly rejected attempted payments after it unilaterally changed payment methods under the tenancy agreement. Through no fault of the Tenant, there is still an outstanding arrears balance of approximately \$6,745.73 (as of May 18, 2022) and the Tenant would be well- served to pay it to avoid a subsequent application.
22. I accept the Tenant's evidence that the parties entered into a tenancy agreement with a monthly rent of \$952.50 that could be paid by e-transfer. This conclusion is supported by the conduct of the parties (they sent and received e-transfers as payments during the tenancy) as well as the Landlords posting within the residential complex, a notice advising residents that e-transfer is an acceptable form of payment.
23. I find that the Landlords attempted to unilaterally change the terms of the tenancy agreement by requiring the Tenant to pay rent by alternative means to the e-transfer method agreed upon as part of the tenancy agreement. This was not lawful. Neither party to a tenancy agreement can unilaterally change its terms—this is a basic premise of contract law.
24. As a result, the Landlords allegation of \$1,905.00 for outstanding rent detailed in the N4 Notice is inaccurate, rendering the N4 Notice defective. Based on the forgoing, the L1 application is dismissed.

THE T2 APPLICATION

25. The evidence supports a finding that the Landlord contravened section 23 of the Act.

Evidence

26. The Tenant alleges that the Landlords' refusal to accept rent payments by e-transfer, combined with threatening her with eviction for not agreeing to a change in their agreement on the method of payment, and, offering to pay her \$500.00 to move out of the unit, constitutes harassment and coercion.
27. N.R. disputed this allegation by reiterating that the Landlords have commercial property banking requirements they were required to follow. Moreover, the offer to terminate the tenancy by paying the Tenant \$500.00 to leave was an offer to facilitate resolving their dispute given that the Tenant was not agreeable to the Landlords decision to change the method of payment required from tenants when paying rent.

Analysis

28. Section 23 of the Act provides that a landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.

29. Although the word 'harass' is not defined in the Act, 'harassment' has been found by this Board to generally be a course of conduct or behavior that the reasonable person knows or ought to know would be unwelcome.
30. In *Khan v. Riverside Residences*, TNT-01689 2001 *CarswellOnt* 6372, it was held by the Board that serving a tenant with multiple N4 notices can constitute harassment if there is no money owed.
31. A reasonable landlord knows or ought to know that serving a tenant with a notice of termination with inaccurate information is inappropriate and harassing. This is clearly unwelcome behavior.
32. Based on the evidence submitted at the hearing I accept the evidence of the Tenant that the Landlord's ongoing efforts to improperly pressure the Tenant into moving from the unit by issuing an N4 Notice after the Tenant made the rent payments from April 30, 2021 through to August 2021 that were actually rejected by the Landlords from September 13, 2021 through to January 1, 2022, and doing so over multiple rental periods, is conduct the Landlords knew or ought to have known would be unwelcome and constitutes harassment in contravention of section 23 of the Act.
33. I also find that the Landlords' pattern of rejecting the Tenants payments was done in a manner inconsistent with the tenancy agreement, constitutes obstruction, and the attempts made to evict her using the Board's process for their own actions, breaches section 23 of the Act.
34. Finally, I do not accept that the Landlords' offer for the Tenant to move for \$500.00 constitutes a breach under section 23 of the Act as parties are free to enter into negotiations at any time during a tenancy which, in my view, the \$500.00 offer is a reflection of. Parties are also free to reject offers from another party, as the Tenant had, neither of which would be considered harassment as bargaining is one of the basic elements of entering into binding agreements. Ultimately, it is the pattern of conduct coupled with the fact that the Landlord was incorrect that the Tenant had not paid their rent is what led to the conduct rising to the level of harassment and obstruction in contravention of section 23 of the Act.

Remedy

a) Rent abatement

35. An abatement is a contractual remedy based on the principle that a tenant pays rent in exchange for a bundle of goods and services. If they pay 100% of the rent they ought to receive 100% of what they are paying for. If they are not, then they ought to be entitled to an abatement equal to the difference in value. When assessing the quantum of abatement, I have considered the nature, duration, and degree of interference that the Landlord's breaches had on the Tenant, and the impact the Landlord's conduct had.
36. The Tenant testified that these events took place during the middle of the pandemic, which left her fearful that she would be unable to find housing due to public health restrictions in

place at that time. Reinforcing this was her observation that there had been a significant increase in the market rent for housing in the area which may have placed her in a position that she may not have been able to afford housing which, given that she was placed in this position despite paying her rent as agreed to by her tenancy agreement, left her feeling vulnerable.

37. Given the evidence of impact before me, and my knowledge of like similar cases, I fix an award for rent abatement for the Landlords' section 23 breaches at 10% of the monthly rent paid at the time of \$952.50 from July 1, 2021 (the beginning of the first rental period the Landlord rejected the Tenant's payments) to February 1, 2022 (the first date the Landlord accepted payments from the Tenant in accordance with an Interim Order issued by the Board). This is equivalent to \$673.27. In my view this amount is reasonable and appropriate given the impact that the Landlords' conduct had on the Tenant.

b) Cease the offending activity

38. The Tenant has asked for the Board to order that the Landlord accept e-transfer from them "as well as any other tenants affected".

39. As I have made a finding that the parties have agreed for rent to be paid by e-transfer, I will order the Landlord to accept e-transfer payments from the Tenant in accordance with the terms and conditions agreed to in the tenancy agreement.

40. As the Board only has jurisdiction to make an order against the parties to this application, I will decline to make an order with respect to any other tenants in the residential complex.

c) Administrative fine

41. The Tenant has requested the Board order the Landlords to pay an administrative fine. The Board's Interpretation Guidelines 16 provides insight into the Boards use of fines and states that an administrative fine is a remedy to be used to encourage compliance with the Act and to deter landlords from engaging in similar activity in the future: "This remedy is not normally imposed unless a landlord has shown a blatant disregard for the Act and other remedies will not provide adequate deterrence."

42. In the present case, although I have made findings that the Landlord has breached certain provisions of the Act, the evidence does not support a finding that the Landlord has shown a blatant disregard for their responsibilities under the Act and, as such, this request is denied.

It is ordered that:

1. The applications are amended in accordance with the reasons above.
2. The L1 application is dismissed.
3. The Landlords shall accept rent payments from the Tenant by e-transfer as agreed to in the tenancy agreement.

4. The Landlords shall pay to the Tenant a rent abatement of \$673.27.
5. The Landlords shall also pay to the Tenants \$48.00 for the cost of filing the application.
6. The total amount the Landlords owes the Tenant is \$721.27.
7. The Landlords shall pay the Tenant the full amount owing by January 15, 2023.
8. If the Landlords does not pay the Tenant the full amount owing by January 15, 2023, the Landlords will owe interest. This will be simple interest calculated from January 16, 2023 at 5.00% annually on the balance outstanding.

January 4, 2022
Date Issued

Emile Ramlochan
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.