



Order under Section 69 Residential Tenancies Act, 2006

Citation: Property Trust Ltd v Parks, 2022 ONLTB 13502

Date: 2022-12-01

File Number: LTB-L-022179-22

In the matter of: 302, 560 BLOOR ST E
OSHAWA ON L1H3N2

Between: Property Trust Ltd Landlord
and
William Parks Tenant

Property Trust Ltd (the 'Landlord') applied for an order to terminate the tenancy and evict William Parks (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 7, 2022.

The Landlord did not attend the hearing but was represented by Roger Kanthiah (the 'property manager'). The Tenant attended the hearing and was self-represented.

Determinations:

Preliminary Issue: What is the Lawful Rent?

1. The Tenant contests the monthly rent indicated on the L1 Application explaining that he was never provided with a Form N1 Notice of Rent Increase and, as far as he was aware, his monthly rent was \$1,350.00 per month. He also testified that the first time he was made aware that the Landlord believed the monthly rent was \$1,366.20 was on Friday, November 4, 2022, when he received documentation from the Landlord in advance of this hearing.
2. In response to the Tenant's allegations that he was not provided with proper notice of rent increase (i.e., a Form N1) the property manager stated that the Tenant did receive the notice from his office (and not from him personally), which was placed in the mailbox. In response to questions posed by the Board to the property manager to provide a copy of the Form N1, the property manager denied having a copy of the document for the Board's review and verification.
3. Subsection 116(1) – (3) of the *Residential Tenancies Act, 2006* (the 'Act') provides that a landlord shall not increase the rent charged to a tenant for a rental unit without first giving the tenant at least 90 days written notice of the landlord's intention to do so. The notice must be in a form approved by the Board and it must set out the amount of new rent.

4. Subsection 116(4) of the Act provides that an increase in rent is void if the landlord has not given the required notice, required by this section, and that the landlord must give a new notice before the landlord can take the increase.
5. The Landlord asserts that they lawfully increased the rent and thus it is their burden to prove that fact. I am not satisfied that the Landlord has discharged its burden in that regard. I accept the Tenant's evidence that he did not receive a Form N1 in his mailbox. I am not prepared to accept that the Notice was placed in the mailbox without any supporting evidence that it was done, something that I would expect to be easily producible by the Landlord. Accordingly, I find that the lawful monthly rent is \$1,350.00.

THE L1 APPLICATION

6. 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.
7. As of the hearing date, the Tenant was still in possession of the rental unit.
8. The lawful rent is \$1,350.00. It is due on the 1st day of each month.
9. Based on the Monthly rent, the daily rent/compensation is \$44.38. This amount is calculated as follows: \$1,350.00 x 12, divided by 365 days.
10. The Tenant has paid \$5,400.00 to the Landlord since the application was filed.
11. The rent arrears owing to November 30, 2022 are \$4,716.20.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
13. The Landlord collected a rent deposit of \$1,350.00 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.

Section 83 considerations

Tenant's evidence

14. The Tenant testified that he fell into arrears because his girlfriend recently passed away which required him to take some time away from work to recover. This resulted in a disruption in his income. However, he did receive compensation through his workplace insurance company who furnished him with some funds (which he provided to the Landlord at that time). He recently returned back to work where he is employed on a full time basis earning an estimated income of \$125,000 annually, which will enable him to address the rent arrears and monthly rent payments in a timely manner. The Tenant proposed the following: (i) weekly payments of \$250.00 commencing within the week following this hearing to be applied to the arrears; and (ii) payment of his rent on time as agreed.

15. Finally, the Tenant testified that he made complaints about cockroaches in the unit, however, the Landlord had not responded to these complaints and this issue had yet to be addressed in compliance with its obligations.

Landlord's evidence

16. The property manager testified that in the event the Board does not grant an eviction the Landlord would suffer significant prejudice as the Tenant's history of non-payment have led to substantial arrears. Elaborating further, the property manager explained that the rent is needed to meet payments for mortgages, property taxes, and other expenses to maintain the property and, given the magnitude of the arrears balance, the Landlord is not interested in maintaining the tenancy but prefers an order for eviction so a new tenant can be found.
17. In response to the Tenant's allegations regarding complaints about cockroaches the property manager denied being aware of these complaints. I am not satisfied that the Tenant has established a serious breach of the Act within the meaning of s. 83(3)(a) of the Act in relation to cockroaches. This finding is limited to the purpose of s. 83, however, and is not meant to preclude the Tenant from pursuing a maintenance application against the Landlord should they so choose.
18. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act. I accept the Tenant's evidence that he fell into arrears due to challenges he faced after his partner passed away which required him to take time off of work. This absence from work disrupted the stream of income needed to meet his monthly rent payments. I am satisfied, given the Tenant's return to full time work, that the tenancy is financially viable.

It is ordered that:

1. The Tenant shall pay to the Landlord \$4,902.20, which represents the arrears of rent (\$4716.20) and costs (\$186.00) outstanding for the period ending November 30, 2022.
2. The Landlord's application for eviction of the Tenant is denied on the condition that:
 - (a) The Tenant shall make the following payments to the Landlord in respect of the monies owing under paragraph 1 of this order:
 1. On or before December 9, 2022, the Tenant shall pay the Landlord \$250.00;
 2. The Tenant shall continue to pay the Landlord \$250 per week on or before the first Monday of each week during the period of December 12, 2022, to April 10, 2023; and

3. The Tenant shall pay the Landlord \$152.20 on or before April 17, 2023.
 - (b) The Tenant shall also pay the Landlord the lawful monthly rent as it becomes due on or before the 1st day of the month starting January 1, 2023 until the arrears are paid in full.
 - (c) If not already paid, the Tenant shall pay rent due for December 2022 on or before December 9, 2022.
3. If the Tenant fails to make any of the payments in accordance with paragraph 2, and by the dates required, then:
 - (a) The Landlord may apply, without notice to the Tenant, under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant, 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 shall bear interest at the post-judgement interest rate determined under subsection 207(7) of the Act.

December 2, 2022
Date Issued

Emile Ramlochan
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.