



**Order under Section 69 and Subsection 87(1)
Residential Tenancies Act, 2006**

Citation: Shen v Van Vrouwerff, 2022 ONLTB 9544

Date: 2022-11-04

File Number: LTB-L-006950-22

In the matter of: 547 OAK ST
WINDSOR ON N9A5E7

Between: Yi Shen Landlord

And

Cynthia Van Vrouwerff Tenant

Yi Shen (the 'Landlord') applied for an order requiring Cynthia Van Vrouwerff (the 'Tenant') to pay the rent that the Tenant owes.

Yi Shen (the 'Landlord') also applied for an order to terminate the tenancy and evict Cynthia Van Vrouwerff (the 'Tenant') because the Tenant has been persistently late in paying the Tenant's rent.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on October 17, 2022.

The Landlord's Legal Representatives Trevor Scheib and Brenell Dean and the Tenant's Legal Representative Tori-Lee Jenkins attended the hearing.

Determinations:

1. At the hearing the Landlord's Legal Representatives relied on oral submissions and referred to documents to support their application. The Tenant's Legal Representative was also given an opportunity to provide submissions and evidence.

Preliminary Issues

2. Prior to the start of the hearing, the Tenant's Legal Representative sought an adjournment of the hearing. The reasons stated were that the Tenant was involved in the upcoming municipal election and was at an event and unable to attend. The second reason was the Tenant had filed her own application with the Board and wanted all applications heard together. The Tenant's Legal Representative did not articulate any overlapping issues between the applications, how inconsistent findings would be avoided or how any Board time would be saved in hearing the matters together.

3. The Tenant's Legal Representative advised me a request to reschedule the hearing had been filed with the Board on October 11, 2022. I asked the Tenant's Legal Representative if the Landlord was ever notified prior to the hearing that an adjournment would be sought and they responded no. They provided no reason why the request could be uploaded to the Board's portal but not forwarded to the Landlord. I noted the Notice of Hearing had been mailed to the Tenant on September 26, 2022 providing ample opportunity to afford the Landlord some notice of the request.
4. The Landlord opposed the request to adjourn and I agreed with the Landlord and did not adjourn the matter. I saw no valid reason to grant the request. The Tenant chose to be elsewhere and did not advise the Landlord in advance of the hearing, perhaps saving them preparation time. Further, I did not find it would be fair to the Landlord to adjourn the matter and have them wait for a conclusion as neither reason provided by the Tenant's Legal Representative was convincing. As a result, I held the matter down to allow the Tenant's Legal Representative an opportunity to speak with the Tenant before proceeding.

N4 Notice Amendment

5. At the outset of the hearing, I raised a preliminary issue with the Landlord's Legal Representative. I pointed out the Certificate of Service for the N4 Notice of Termination indicated it was served on January 17, 2022 while the N4 Notice itself was signed and dated on January 18, 2022. I was interested to know how the document could be served prior to it being created.
6. The Landlord's Legal Representative at this point in the hearing was Mr. Scheib. His submission was that both the N4 and N8 Notices were served on the same date, that being January 17, 2022 and that the N4 Notice contained a typographical error. I noted the date on the N4 was filled out in handwriting while the date on the N8 Notice was computer generated print.
7. The Tenant's Legal Representative provided a copy of the N4 Notice that was served on the Tenant and it contained no date whatsoever beside the signature line. I examined the N4 Notice provided by the Tenant and compared it to the N4 Notice filed with the Board to support their L1 application. The handwriting on the rent arrear tables made it obvious both documents were the same. Except that the Landlord's copy and the one they filed with the Board appears to have had material added to it, after it was served.
8. The question as to whether a Notice of Termination can be amended is one for the Board. It is not on a Landlord to notice an omission or error and usurp the Board's process by unilaterally amending a Notice of Termination after it has already been served on the Tenant. The Tenant is entitled to the same documents the Landlord is relying on and the Board is considering. Allowing an amendment, to a Notice of Termination, after it has been served and without permission of the Board, would clearly be a dangerous practice and as a result I found the N4 Notice invalid.
9. The Landlord's Legal Representative opted to proceed on an amended L9 application seeking only the rent arrears owing and eviction on their L2 application.

L9 arrears

10. As of the hearing date, the Tenant was still in possession of the rental unit.
11. The Tenant did not pay the total rent they were required to pay for the period from June 1, 2021 to October 31, 2022.
12. The lawful rent is \$550.00. It is due on the 1st day of each month. This only became clear after I questioned the Landlord's Legal Representative in relation to the information being provided. The arrears being sought were incorrect. The Landlord's update sheet was incorrect. The rent deposit the Landlord claimed to be holding was incorrect.
13. I held the matter down so the Landlord's Legal Representative could review the file and proceed with accurate information. When the hearing resumed, the Landlord's Legal Representative Brenell Dean continued with the file.
14. The Landlord's Legal Representative sought rental arrears totalling \$5,990.00 until October 31, 2022. Their update sheet sought \$5,440.00.
15. The Landlord acknowledged two payments totalling \$1,100.00 from the Tenant since the application was filed. The Tenant's Legal Representative submitted evidence from the Ministry of Children, Community and Social Services dated October 4, 2022. The letter verifies payments made by ODSP to the Landlord on behalf of the Tenant and when they were made. In total, the letter shows five payments of \$550.00 were made to the Landlord. Two of which the Landlord's Legal Representative acknowledged and three the Landlord's Legal Representative did not. The three payments not acknowledged were "pay direct" and occurred on December 31, 2021, January 31, 2022 and February 28, 2022.
16. On a balance of probabilities, I find the evidence of the Tenant more reliable. I found the Landlord's evidence unorganized and simply wrong on some occasions, leading me to have concerns on the accuracy of it. The Tenant acknowledges owing the Landlord \$4,340.00. This amount is the arrears sought by the Landlord less the three disputed payments the letter from the Ministry of Children, Community and Social Services says were made.
17. I am satisfied the rent arrears owing to October 31, 2022 are \$4,340.00.
18. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

L2 Application

19. On January 17, 2022 the Landlord served an N8 Notice on the Tenant alleging persistently late rental payments. The Notice alleges the monthly rent is due on the first day of each month and is considered late if it is paid on or after the second day of each month. It further states that the monthly rent has been paid "persistently late 11 times in the past 11 months during the following months:" and it lists several months with dates the rent was eventually paid.
20. The Tenant's Legal Representative did not dispute the late rental payments made by the Tenant and I find on a balance of probabilities the Tenant has paid her rent persistently

late. Since serving the Notice of Termination, the Tenant has continued to pay her rent late and has amassed some arrears. The Landlord sought eviction within eleven days of this order while the Tenant's Legal Representative requested a conditional order requiring the Tenant to pay the monthly rent on time and in full for a period of one year. In support of this request, the Tenant's Legal Representative pointed out the Tenant is on disability payments and had struggled with homelessness due to the Covid 19 pandemic. She lived in shelters prior to this tenancy commencing. The Tenant is 50 years old and has mental health issues. Lastly, the Tenant's Legal Representative submitted the Tenant will have direct payment established once again between the Landlord and ODSP which will resolve the late payment issues.

21. The Landlord opposed a conditional order and submitted any payments made by the Tenant to the Landlord could be applied to the arrears the Landlord anticipated being ordered as owing in this application. It was their position this would automatically put the Tenant in breach of the conditional order being requested.
22. I find as a general principle of law, a debtor, in this case the Tenant, can specify to the Landlord, the debt being paid at the time payment is made.
23. 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 conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act. Given the circumstances the Tenant has and is experiencing I find it appropriate to exercise relief.
24. A conditional order shall issue permitting the tenancy to continue so long as the Tenant continues to pay the monthly rent on time for the next 12 months.
25. This order contains all of the reasons for my decision within it. No further reasons shall be issued.

It is ordered that:

1. The Tenant shall pay to the Landlord \$4,526.00. This amount includes rent arrears owing up to October 31, 2022 and the cost of the application.
2. If the Tenant does not pay the Landlord the full amount owing set out in paragraph 1 of this order on or before November 15, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 16, 2022 at 4.00% annually on the balance outstanding.
3. The Tenant shall pay to the Landlord new rent on time and in full for the period commencing December 1, 2022 through to November 1, 2023.
4. If the Tenant fails to make any one of the payments in accordance with paragraph 3 of this order the Landlord may, without notice to the Tenant and within 30 days of the breach, apply to the Board pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant.

November 4, 2022

Date Issued

John Cashmore

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.