



Order under Section 69 Residential Tenancies Act, 2006

Citation: Miller v Saunders, 2022 ONLTB 10110

Date: 2022-11-03

File Number: LTB-L-011279-22

In the matter of: 10, 617 LAKESHORE DR
NORTH BAY ON P1A2E7

Between: John Miller Landlord

And

Amber Saunders Tenant

John Miller (the 'Landlord') applied for an order to terminate the tenancy and evict Amber Saunders (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on August 30, 2022.

The following attended the hearing:

- Landlord's Legal Representative H. Gibson,
- Landlord's Agent, administrator Sue Miller,
- Landlord's witness Miles McMillan,
- the Tenant, and
- the Tenant's Legal Representative J. Demellweek

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 \$1,340.75. It is due on the 1st day of each month.
4. The N4 Notice to End Tenancy for Non-Payment of Rent is dated February 10, 2022 with a date of termination of February 24, 2022. The L1 application, which is dated February 25, 2022, claims arrears in the amount of \$1,331.50.
5. The L1/L9 Update Sheet filed August 26, 2022 claims \$1,334.50 as outstanding arrears as of the date of the hearing in addition to the filing fee. The Landlord's Agent testified that the Tenant persistently paid late, and that in this case, paid the outstanding arrears the day prior to the hearing. Therefore, no arrears are owing as at the date of the hearing, only the application fee for the L1 application.

6. The Tenant's evidence was that all rent arrears had been paid by February 28, 2022. The Tenant's Representative submitted that the application should have been withdrawn after that date as no arrears were owing. She also submitted that no filing fee should be owing as it was an "unnecessary application."
7. The Landlord's evidence is that the February payment to clear the arrears was made on February 28, 2022. This is not prior to the date of termination in the N4 Notice and therefore the Tenant did not void the Notice, and it is not prior to the date the Landlord filed this L1 application.
8. The Tenant provided evidence of "overpayment" of rent, showing payments from February to August 2022 totalling \$9,556.50 when the rent owing was \$9,385.25 (a difference of \$171.25). No evidence was provided regarding the dates that the payments were made.
9. It was the testimony of the Landlord's Agent that the \$9,556.50 in payments that the Tenant claims to have made included payments for parking. The parking charge was not claimed in the application for arrears. The Tenant agreed that there was a separate charge for parking that was not part of the lawful monthly rent. She did not provide evidence that the payments that she made were exclusively for rent or any breakdown of the payments amounts.
10. I find it more likely than not on the basis of the evidence presented that the payments that the Tenant claims included some of the parking charges. The Landlord and Tenant are in agreement that no rent arrears were outstanding as of the date of the hearing. If the Tenant believes that she has overpaid rent or paid an unlawful charge to the Landlord, she has the right to bring an application to the Board.
11. As discussed above, the Tenant's Representative submitted that the application was "unnecessary" and therefore the fee should not be owing. The application was brought properly as arrears were owing at the time of the application and the N4 Notice was not voided.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs. The Tenant paid the arrears owing but did not pay the filing fee.
13. Pursuant to section 74(2) of the *Residential Tenancies Act, 2006* (the "Act"),

An application by a landlord under section 69 for an order terminating a tenancy and evicting the tenant based on a notice of termination under section 59 shall be discontinued if, before the Board issues the eviction order, the Board is satisfied that the tenant has paid to the landlord or to the Board,

(a) the amount of rent that is in arrears under the tenancy agreement;

(b) the amount of additional rent that would have been due under the tenancy agreement as at the date of payment by the tenant had notice of termination not been given; and

(c) the landlord's application fee.

14. Therefore, I disagree with the Tenant's position that the application should be dismissed or that it should have been withdrawn. There was no obligation on the part of the Landlord to withdraw an application while any amount owing remains unpaid, including the application fee to which it is entitled. Had the Tenant paid the arrears owing on the N4 Notice before the termination, she would have voided the Notice. She did not. Had she paid the filing fee before the hearing date, the application would have been discontinued.
15. 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 pursuant to subsection 83(1)(a) of the Act as the only amount remaining outstanding is the \$186.00 fee.

Costs

16. Tenant's Representative requested costs awarded against the Landlord because he did not withdraw the application after the arrears were paid by the end of February 2022. The Landlord did nothing improper in filing the application, because as of the date of the application, which was after the date of termination indicated on the N4 Notice, there were arrears outstanding. As discussed above, under s. 74(2), the Landlord was under no obligation to withdraw the application, as the filing fee of \$186.00 remained unpaid as of the date of the hearing, and the Landlord is entitled to seek reimbursement of that cost. No costs will be awarded.

It is ordered that:

1. The Tenant shall pay to the Landlord the sum of \$186.00, which represents the amount of the application fee.
2. If the Tenant does not pay the Landlord the full amount owing on or before November 14, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 15, 2022 at 4.00% annually on the balance outstanding.

November 3, 2022

Date Issued

Margo den Haan

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.