



Order under Section 69 Residential Tenancies Act, 2006

Citation: Summit Properties Inc. v Owl, 2022 ONLTB 9889

Date: 2022-10-26

File Number: LTB-L-018517-22

In the matter of: 110, 740 PROUDFOOT LANE
LONDON ON N6H5H2

Between: Summit Properties Inc. Landlord

And

Katrina Owl Tenant

Summit Properties Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Katrina Owl (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. (L1 application)

This L1 application was heard by videoconference on October 12, 2022.

The Landlord's Legal Representative, Gail Kukor Lang ('LLR'), and the Tenant attended the hearing. The Tenant consulted with Tenant Duty Counsel prior to the hearing. The parties attempted mediation but were unsuccessful.

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. The N4 Notice set out a termination date of March 24, 2022, and the L1 application was filed with the LTB on March 31, 2022.
3. The Tenant made three payments in April 2022, the last one for \$1,520.36 on April 28, 2022, which when totalled together was sufficient for the Tenant to achieve a zero balance in April 2022, meaning that all rent arrears up to April 30, 2022 had been paid in full.
4. However, the Landlord incurred costs of \$186.00 for filing the application and normally is entitled to reimbursement of those costs.
5. The Tenant contested the requirement to pay the Landlord for the filing fee in this case. She testified that pursuant to an agreement with the Landlord's administrator about what had been owing in early April 2022, she was told the exact amount to pay, which she did. The Tenant testified that the Landlord sent a letter to her dated September 23, 2022, stating that nothing further from the Tenant was required in respect of the L1 application. Then in the last week, the Tenant stated she heard from the first time from the Landlord

that the L1 application would be proceeded with because the filing fee of \$186.00 was still in question. The Tenant submitted she did not have time to fully prepare for this hearing as a result.

6. LLR confirmed the Tenant's testimony above but explained that there had been a second issue under the tenancy that had led to the Landlord making an accounting error on the amounts owing under this L1 application. LLR submitted there had been a small damages claim/amount of \$254.25 that was owing around the time of April 2022 when the rent arrears were also an outstanding matter between the parties. LLR submitted the Tenant paid the damages amount owing, and the account ledger erroneously reported the damages amount paid as a credit toward the filing fee amount owing.
7. With reference to section 202 of the *Residential Tenancies Act, 2006* (the 'Act'), it was evident to me from the parties' submissions at the hearing that in April 2022, the Tenant paid all rent arrears in full to the Landlord, to make her tenancy whole up to April 30, 2022. It was also evident to me that her separate payment of money to reconcile a damages amount was also made specifically for that purpose, and that no payment of the \$186 filing fee had been made.
8. Based on the foregoing, I determined that on a balance of probabilities, the Landlord made an honest error in its accounting report, specifically for the L1 application at bar.
9. In my view, an honest error does not simply invalidate a legitimate claim for filing costs. The Tenant is not to blame for the error, that is for certain. But I do not believe this honest error negates the reality that the \$186 filing fee is still outstanding, which the Landlord has the right to claim, and has.
10. While I accept the Tenant was caught by surprise last week when she learned the Landlord was intent on seeking the paid filing fee, I do not believe that there was much more the Tenant could provide, other than what she did provide, at this hearing. The single issue before me is not a complex matter, but one that needs consideration to determine what the good faith efforts of the parties were, and what the real substance of events has been.
11. Consistent with the LTB's Rule 23 and with the LTB's Interpretation Guideline No. 3 (entitled "Costs"), if a tenant in fact owes rent to a landlord as of the date a landlord files an L1 application, then the cost of filing the L1 application is, as a rule, ordered to be paid by the tenant to the landlord. This is the case here.
12. I further note that the LTB's legal records confirm the Landlord's error through the submission of an L1 update sheet dated September 22, 2022, and a subsequent filing by the Landlord on October 6, 2022 (an Advance Resolution Request, and amended L1 update sheet).
13. Summarizing the findings above:
 - The Tenant paid all rent arrears for the period ending April 30, 2022 after the L1 application was filed.
 - The only amount outstanding is the Landlord's cost of filing the L1 application. As a result, the order will be limited to costs only and not include any eviction.

14. Based on the final submissions of the parties, I determined the payment of the filing fee is to occur on or before December 31, 2022. I also provided this finding to the parties present.

It is ordered that:

1. On or before December 31, 2022, the Tenant shall pay the Landlord the amount of \$186.00 which represents the L1 application filing fee.
2. If the Tenant does not pay the Landlord the full amount owing on or before December 31, 2022, the Tenant will start to owe interest. This will be simple interest calculated from January 1, 2023 at 4.00% annually on the balance outstanding.

October 26, 2022
Date Issued

Alex Brkic
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.