



Order under Section 69 Residential Tenancies Act, 2006

Citation: Kell v Peter, 2022 ONLTB 9461

Date: 2022-10-24

File Number: LTB-L-034712-22

In the matter of: 23 SAWSTON CIR
BRAMPTON ON L7A2N7

Between: George Kell Landlord

And

Applin Peter, Tenants
Ruth Applin

George Kell (the 'Landlord') applied for an order to terminate the tenancy and evict Applin Peter and Ruth Applin (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes (L1 application); The Landlord also applied because the Tenants did not pay rent that the Tenants owe (L9 application) and because the Landlords required the rental unit for personal residential occupation (L2 application)

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

The Landlord's Agent, Peter Kell, the Tenants, Ruth Applin and the Tenants' Representative, Pavan Bassi attended the hearing.

Determinations:

1. This tenancy started April 1, 2018 and the standardized lease came into force April 30, 2018 pursuant to *O.Reg 19/8 of the Residential Tenancy Act, 2006 (the 'Act')*. There's no requirement for the Landlord to provide a standardized lease. Even if the tenancy agreement is not in the standard lease format, the tenancy agreement is still enforceable as permitted under Section 12.1(11) of the Act. In addition, the definition of "tenancy agreement" under section 2(1) includes written oral or implied agreement between a Tenants and a landlord for occupancy of a rental unit and includes a licence to occupy a rental unit.
2. The Landlord's address was not on their written agreement. I am satisfied, despite conflicting oral evidence from the Tenants, the Landlord provided his legal address to the Tenants as supported by the unchallenged text messages exchanged between the Landlord's son and Ruth Applin dated October 1, 2019 and December 2, 2019. The address on the text message was noted to be the same address the Landlord used as his legal address on their L1 application. The Tenants cannot withhold rent because the rent was NOT suspended.

3. Since the Landlord filed an L1 application for arrears and eviction for non-payment of rent, the L9 application that was also filed was requested to be withdrawn. In accordance with subsection 200(4) of the Act, I consent to the withdrawal of the application.
4. The Landlord filed an L2 application. The N12 Notice was not provided to the Board when the application was filed as required under section 53 of the *O.Reg 519/06*. I have no jurisdiction to consider the merits without an accompanied N12 Notice and therefore this application is dismissed.
5. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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.
6. As of the hearing date, the Tenants were still in possession of the rental unit.
7. The lawful rent is \$2,500.00. It is due on the first day of each month.
8. The Tenants has not made any payments since the application was filed.
9. The L1 application was amended to include June 2022 unpaid rent.
10. The rent arrears owing to October 31, 2022 are \$12,500.00.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$2,500.00 from the Tenants 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.
13. 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. The Tenants stated she was forced to leave work to care for her child and anticipates that she will return to work which will add to the household income. The Tenants initially proposed a 25 month payment plan then offered a 12 month payment plan. Although the Landlord was opposed to the payment plan, I find it fair to give the Tenants an opportunity to preserve this tenancy. Since the Tenants have savings and stated they have not squandered the rent that hasn't been paid, I find it fair that the following payment plan is more reasonable to reduce the prejudice to the Landlord.
14. No decision was made at the hearing but an oral inference was a made about payments due on October 1, 2022 which gets replaced by this final written decision pursuant to the Statutory Powers and Procedure Act.

It is ordered that:

1. The L9 application is dismissed.
2. The L2 application is dismissed.

3. The Tenants shall pay to the Landlord \$12,686.00 which represents the arrears of rent (\$12,500.00) and costs (\$186.00) outstanding for the period ending October 31, 2022.
4. The Landlord's application for eviction of the Tenants is denied on the condition that:
 - The Tenants shall make the following payments to the Landlord in respect of the monies owing under paragraph 3 of this order:
 - a) \$1,500.00 (arrears) on or before the 15th day of each month for 8 months starting November 15, 2022 to June 15, 2023; and
 - b) \$686.00 (outstanding balance) on or before July 15, 2023.
5. The Tenants shall also pay the Landlord the monthly rent on time and in full commencing November 2022 to July 2023 on the first day of each month or until the outstanding balance of arrears is paid.
6. If the Tenants fail to make any of the payments in accordance with paragraph 4 and 5, and by the dates required, then:
 - (a) The Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenants, 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 3 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 owing shall bear interest at the post-judgment interest rate determined under subsection 207(7) of the Act.

October 24, 2022
Date Issued

Sandra Macchione
Member, Landlord and Tenants 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.