

Landlord
and
Tenant

Onbriio Board

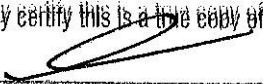
Order under Section 69
Residential Tenancies Act, 2006

File Number: TSL-76952-16

In the matter of: 1394A GERRARD STREET EAST
TORONTO ON M4L1Z4

Between: Sulinder Gill

Landlord

I hereby certify this is a true copy of the Order
(Name of Document)


(Signature of Staff Member)

And

Marc Anthony Jureidini
Stephen Patrick Gemon

OCT

Tenants

Board and Tenant Board

Sulinder Gill (the 'Landlord') applied, to the Landlord and Tenant Board (the "Board"), for an Order to terminate the tenancy and evict Marc Anthony Jureidini and Stephen Patrick Gemon (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe (the "L1 application").

The Landlord also applied for an Order to terminate the tenancy and evict the Tenants because they have been persistently late in paying their rent (the "L2 application").

Shortly before the hearing, Landlord's counsel sought to amend the L2 application to include a claim for damages, in the sum of \$179.94, representing costs incurred by the Landlord to clean the unit and to switch over one of the utilities into the Landlord's name (the "claim for damages").

The Landlord's applications were heard in Toronto on October 14, 2016.

The Landlord attended the hearing and was represented by K. J. Chong, counsel.

The Tenants did not attend. I had no record before me of a request to adjourn and was satisfied that the Tenants were properly served with notice of the time, place and location of the hearing. Nonetheless, I waited until past 10:00 a.m. When the Tenants still did not arrive, I proceeded to hear the Landlord's applications.

It is determined that:

The L2 Application

1. The Tenants vacated the unit on September 1, 2016. After the Tenants vacated the unit, the Landlord inspected the unit and determined that it required cleaning. The Landlord proceeded to hire a cleaning company and incurred costs. After the Tenants vacated the unit the Landlord incurred further costs to switch over one of the utilities from the Tenants' names into the Landlord's name.
2. As the Tenants vacated the unit on September 1, 2016, the portion of the L2 application pertaining to persistent late payment of rent is moot and will be dismissed.
3. With respect to the Landlord's claim for damages, said claims crystalized after the Tenants vacated the unit. The Board has jurisdiction over a landlord and tenant relationship while the tenant is in possession, or if the landlord filed the application while the tenant was in possession. In this particular case, while the L2 application was filed while the Tenants were in possession, the amendment for a claim for damages was filed after the Tenants vacated the unit and, thus, as at the date of the hearing, the Tenants were no longer in possession. The portion of the L2 application pertaining to damages will also be dismissed. The Landlord will have to pursue the remedies sought before a court of competent jurisdiction.

The L1 Application

Arrears of Rent

4. The Tenants vacated the unit on September 1, 2016. Landlord's counsel requested that I terminate the tenancy effective September 1, 2016 and an Order will issue accordingly.
5. As the Tenants were not in possession of the unit on the date of the hearing, the Landlord's L1 application was amended to an L9 application.
6. The monthly rent for the unit was \$1,475.00.
7. The Tenants have not paid \$4,470.00 of the total rent the Tenants were required to pay for the period from January 1, 2016 to August 31, 2016. Because of the arrears, the Landlord served a Notice of Termination.
8. The Landlord collected a rent deposit of \$1,400.00 from the Tenants and this deposit is still being held by the Landlord.
9. The Tenants also owe the Landlord \$170.00 for the cost of filing the application.
10. The total amount owing is \$3,288.49, which represents the arrears of rent to September 1, 2016 (\$4,518.49), less the last month's rent deposit (\$1,400.00), plus the cost of filing the application (\$170.00).

The Issue Concerning Utilities

1. Landlord's counsel submitted, and this is repeated in the L1/L9 Information Update form submitted during the hearing, that I should award to the Landlord the cleaning cost and utility switch over cost mentioned above, as well as the hot water tank rental and gas costs, in the amount of \$84.27. Landlord's counsel further submitted that (should deduct, from the amount claimed, \$138.88 for the utility usage by another tenant of the complex.

12. The L1 is not the appropriate application to bring the Landlord's claim for damages before the Board. Further, and for the reasons stated above, the Landlord's claim for the same damages (cleaning cost and utility switch over cost) was dismissed in the L2 application.

13. With respect to utilities, and as I explained at the hearing, the Board does not have the jurisdiction to make an order requiring a tenant to pay a landlord amounts for utilities that are not included in the rent. There are situations where disputes over utilities can result in conduct by either landlord or a tenant that might come under the Board's jurisdiction. Such conduct may involve a tenant's refusal to pay utilities they are liable for resulting in a landlord serving notice to terminate under subsection 64(1) which permits notice to be given where a tenant's behaviour substantially interferes with a landlord's lawful right, privilege or interest. Also, a tenant may claim that a landlord substantially interfered with a tenant's reasonable enjoyment under section 22 of the Act where the landlord tried to pressure the tenant to pay for utilities he or she did not agree to pay under the tenancy agreement.

14. The case herein is different. The Landlord simply requests an order requiring the Tenants to pay for the cost of utilities that were allegedly used, separately metered, and not included in the rent.

15. The definition of rent in subsection 2(1) of the Act reads as follows:

"rent" includes the amount of any consideration paid or given or required to be paid or given by or on behalf of a tenant to a landlord or the landlord's agent for the right to occupy a rental unit and for any services and facilities and any privilege, accommodation or thing that the landlord provides for the tenant in respect of the occupancy of the rental unit, whether or not a separate charge is made for services and facilities or for the privilege, accommodation or thing, but "rent" does not include,

(a) an amount paid by a tenant to a landlord to reimburse the landlord for property taxes paid by the landlord with respect to a mobile home or a land lease home owned by a tenant, or

(b) an amount that a landlord charges a tenant of a rental' unit in a care home for care services or meals;

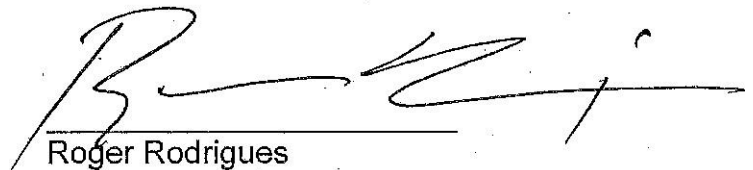
16. The stated definition means is that rent is the total amount charged for the right to occupy a rental unit whether or not there are separately enumerated charges for individual additional services or facilities.

17. There are two statutory exceptions to this rule. In a mobile home park or land lease community, property taxes on the tenant's home are excluded from the rent and, in a care home, the amount charged for care services or meals is similarly excluded.

18. The reason for these exclusions is that such charges are prone to fluctuation outside the control of a landlord and, further, the Act does not permit the Landlord to adjust the rent each month in order to reflect these changes in the utility or other charges owing by the tenants. In the case of a mobile home, property taxes, if any, charged on a mobile home separate from the land are clearly going to fluctuate up and down for reasons outside of the landlord's control—this is especially so if the tenant performs improvements to the mobile home. Similarly, charges for care home services and meals fluctuate based on the care needs of the tenant and are also beyond a landlord's control. Charges that fluctuate up and down on a regular basis cannot be reconciled with the strict regulation of rent that is set out in Part VII of the Act and this has consistently been the position of the Board as stated in Interpretation Guideline # 11 Evi.ction for Failure to Pay Rent; which I am not bound by, but I choose to adopt in the instant case.
19. I have considered the analysis of Deputy Judge Winny in *Finney v. Cepovski* 257 A.C.W.S. (3d) 213, as presented by Landlord's counsel, however, and for the reasons stated, I respectfully disagree with the analysis, which is too narrow and fails to take into account the complete scheme of the Act with respect to rent as set out in sections 110 through 133. It is a well-established principle of statutory interpretation that the meaning of legislation must focus on the words of the relevant statutory provisions, read in their entire context and in their grammatical and ordinary sense and interpreted harmoniously with the scheme and the object of the legislation and with drafters' intention. The Supreme Court has repeatedly affirmed this approach to statutory interpretation, including in *R. v. Gladue*, 1999 CanLJ 679 (SCC) and in *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLJ 837 (SCC).
20. Therefore, while the unpaid amounts for utilities in the instant case may very well be a debt owing to the Landlord, the claimed amount will not be included in the calculation of arrears of rent. The Landlord may recover the amount at issue in the courts.

It is ordered that:

1. The tenancy is terminated, effective September 1, 2016.
2. The L2 application is dismissed.
3. The Landlord's L1 application is amended to an L9 application.
4. The Tenants shall pay the Landlord \$3,288.49, representing the arrears of rent and the cost of filing the application, less the last month's rent deposit, on or before November 4, 2016.
5. If the Tenants do not pay the Landlord the full amount owing on or before November 4, 2016, the Tenants will start to owe interest. This will be simple interest calculated from November 5, 2016 at 2.00% annually on the balance outstanding.



Roger Rodrigues

October 24, 2016

Date Issued

Roger Rodrigues

Member, Landlord and Tenant Board

Toronto South-RO

79 St. Clair Avenue East, Suite 212, 2nd Floor
Toronto ON M4T1M6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.