

Order under Section 69
Residential Tenancies Act, 2006

File Number: TEL-81898-17

O.I. (the 'Landlord') applied for an order to terminate the tenancy and evict M.L. and M.L. (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard in Lindsay on December 5, 2017, and March 19, 2018.

The Landlord's corporate owner, D.V., the Landlord's representative, L.W., and the Tenant attended the hearing. The Tenant's representative, M.P., also attended the second day of the hearing. S.C. testified on behalf of the Landlord.

Preliminary Issue:

1. By way of background, the residential complex is a mobile home park and the Tenant rents three separate units in the complex. The applications and issues for the three units are the same and all three applications were heard together.
2. On the first day of hearing, December 5, 2017, the Tenant requested an adjournment so that he could seek legal counsel. The Tenant says that he thought he could receive assistance from Duty Counsel, but he now understands that is not possible.
3. During the hearing, tenant duty counsel, SC, provided testimony regarding what instructions she had given to the Tenant when this matter previously came before the Board on September 12, 2017. SC says that she specifically advised the Tenant at that time that she was prohibited from representing him due to a conflict of interest.
4. SC also clarified that, when the previous landlords filed for bankruptcy, she assembled the majority of the tenants into an association. The association collected rent and maintained the park while they waited for a new owner to purchase the property. SC says the Tenant was not part of the association and he did not contribute to the collection of monthly rent. This fact also prohibited SC from representing the Tenant at the hearing.
5. SC says the notices of termination were served in May 2017, the application was filed in June 2017 and the Tenant was told in person in September 2017 that she could not assist him. SC says the Tenant has had more than enough time to find legal representation.
6. The Tenant says that he did not understand the SC could not represent him because he did not understand what a "conflict of interest" was.
7. Based on the evidence before me at the hearing, I am satisfied that the Tenant was properly informed months prior to the hearing that SC could not represent him. The Tenant admits that he was told there was a "conflict of interest" but I find that he failed to act on that information to either get clarification or to seek legal representation elsewhere.

8. As this matter had already come before the Board three months prior and as the Tenant had an opportunity to seek legal counsel, I denied the Tenant's request for an adjournment.

Determinations:

9. The Tenant has not paid the total rent the Tenant was required to pay for the period from October 1, 2015 to December 31, 2017. Because of the arrears, the Landlord served a Notice of Termination effective May 31, 2017.
10. The arrears of rent owing for the period ending March 31, 2018, total \$15,375.00.
11. The Landlord incurred costs as a result of filing the application in the amount of \$175.00 and is entitled to reimbursement for those costs.
12. There is no dispute between the parties as to the chronology of events in this matter. The previous landlord declared bankruptcy on January 19, 2016. The residential complex was essentially abandoned for an entire year. During that year, the Trustee in Bankruptcy (the 'Trustee') refused to collect rent from any of the tenants on the property. Indeed, when rent cheques were sent to the Trustee, he returned them to the appropriate tenant.
13. The current Landlord purchased the mobile home park in April 2017 and the Landlord is now seeking rental arrears for all outstanding rent from the tenants, including any rent that was owing before the previous landlord declared bankruptcy.
14. There is no dispute that the Tenant purchased this unit from the previous landlord in August 2015. The application before me claims outstanding arrears beginning in October 2015.
15. The Tenant and his representative make several arguments including:
 - The new Landlord is not permitted to collect rent that was owing before they bought the property;
 - The Trustee should have collected rent from the tenants and any claim for that rent now is "unjust enrichment";
 - The notice of termination is invalid because it claims an increase to the monthly rent that is above the guideline;
 - The notice of termination is invalid because the Tenant had an arrangement with the previous landlord in which he provided work in exchange for rent; and
 - The notice of termination is invalid because the Tenant had an agreement with the previous landlord for different monthly rent amounts.

The New Landlord's Rights

16. As I explained several times at the hearing, the new Landlord is permitted to claim any and all outstanding rent that became due for the period before they bought the property.
17. Pursuant to section 18 of the Act, covenants “run with the land” which means when there is a transfer of title the new landlord steps into the shoes of the old landlord and they must accept the terms and conditions of the tenancy as they find them. In other words, the new Landlord must accept any debts or credits in the tenancy and is entitled to claim any outstanding arrears of rent.
18. Based on the evidence before me, I find that the new Landlord is entitled to collect any amount of rent that may be outstanding, including rent arrears for the period prior to the sale of the property.

The Trustee in Bankruptcy

19. The Tenant’s representative says that the Trustee failed in his duty of care towards the Landlord and he should have collected and retained any monthly rent that was offered to him by any of the tenants.
20. It is useful to note that the Tenant’s representative led no evidence regarding whether the Tenant actually tried to pay rent to the Trustee, but that issue is not particularly relevant to my analysis.
21. As I explained at the hearing, whether or not the Trustee fulfilled his or her duty of care to the Landlord is not a matter within my jurisdiction. If the Landlord has concerns about how the terms of the bankruptcy were handled, they can pursue a remedy in a court of competent jurisdiction. I have no jurisdiction to determine whether the Trustee was required to collect and retain the monthly rent.
22. Based on the evidence before me, I am satisfied that, even if the Trustee should have collected the monthly rent, that does not change the wording of the Act which, as stated above, requires the new Landlord to step into the shoes of the previous landlord and collect any rent that may be outstanding.

Above Guideline Increase

23. The Tenant’s representative says that the Landlord is claiming a rent increase that is above the legislated guideline amount. The Tenant’s representative cites subsection 6(2) of the Act which was repealed and which limited the “rent control” provisions to certain properties. The Tenant’s representative says that this mobile home park is now subject to the rent control provisions and the Landlord was not permitted to increase the rent above the guideline.
24. In support of his position, the Tenant’s representative provided the Board with a copy of an N2 notice of rent increase which says that the monthly rent for Unit #2 will increase to \$980.00 on August 1, 2017.

25. The difficulty with this argument is two-fold. First, the section of the Act in question was not repealed until May 30, 2017. The Act includes “grandfathering” provisions in subsection 120(1)(3) which outline which notices of rent increase will be valid and which will be invalid. The notice before me is dated April 25, 2017. Neither the Tenant nor the Landlord led any evidence regarding how or when the notice was served. However, if I assume that the notice was served on or after April 25th, the transitional provisions of the Act say that this notice is valid and any increase that is implemented must be reduced to the guideline amount. This means there is nothing inherently flawed regarding the notice of rent increase.
26. The second problem with the argument is that it appears the Landlord did not actually implement the rent increase listed in the notice. I say this because the N4 notice of termination lists the monthly rent for Unit #2 as \$512.50 dating back to October 2015, and the application and two hearing update sheets since the application all list the monthly rent for Unit #2 as \$512.50.
27. Based on the evidence before me, I am not satisfied that the Landlord actually increased the monthly rent or that it increased the monthly rent in a way that was not in keeping with the requirements of the Act.

The Work for Rent Arrangement

28. The Tenant says that he was “unofficially employed” by the previous landlord and had been for 12 years. As part of this informal arrangement, the landlord would trade portions of the monthly rent in exchange for the Tenant performing various tasks on the property including shovelling snow.
29. The Tenant says he offered to make a similar arrangement with the new Landlord but they refused.
30. When questioned regarding the terms of his agreement, the Tenant could not provide any documentary evidence or any other corroborating evidence to explain the precise terms and conditions of this arrangement. The Tenant could not provide a statement of account showing work that he had performed over the years or the amount of rent that was deducted in exchange for that work. The Tenant could also not provide an exact explanation regarding what precise work he did on the property, other than that he periodically shovelled snow. The Tenant’s testimony regarding this issue was vague and he provided very few details.
31. The previous landlord did not attend the hearing to provide any testimony regarding the nature of the alleged arrangement he had with the Tenant for the last 12 years.
32. Based on the evidence before me, I am not satisfied that the Tenant had a verbal agreement with the previous landlord in which he performed work in exchange for a deduction on his rent.

The Monthly Rent is Incorrect

33. The Tenant says that the amount of arrears the Landlord is claiming is incorrect. The Tenant says he had a written lease agreement with the previous landlords and the amount of monthly rent they agreed to is different than the amount of rent the new Landlord is charging.
34. On the first hearing day, the Tenant provided the Board with a copy of a scanned document called a "lease agreement" (**Document A**). This document contains one single paragraph that describes two Commodore park model homes and identifies them each as Unit #2 and Unit# 24. Document A says that the Tenant was the owner of Unit #2 as of August 14, 2015, "in the amount of \$348.72". Document A also says that the Tenant was the owner of Unit #24 as of August 27, 2015, "in the amount of \$338.26". The Tenant says the document was signed by himself, his partner and the two previous landlords on August 27, 2015.
35. Even though the word "rent" is not listed anywhere in Document A, the Tenant says it confirms that the monthly rent for Unit #2 is \$348.72. The Tenant says he had a discussion with the new Landlord and sent this "lease agreement" via email to her on October 17, 2017, as proof that the \$512.50 she was charging for Unit #2 was incorrect.
36. On the second day of hearing, the Tenant provided the Board with a copy of a second document with the title "lease amount" (**Document B**). This document is dated and signed on August 14, 2015, and contains one single paragraph that describes a Commodore park model home identified as Unit #2. However, the description of the Unit #2 model home in Document B does not match the description in Document A. The Tenant says that this is simply a typographical error.
37. Also, Document B is dated and signed on a different date than Document A, even though the subject of both documents is the same. The Tenant had no explanation for this discrepancy.
38. Finally, the monthly rent listed for Unit #2 in Document B is \$338.26 while the amount listed in Document A is \$348.72. The Tenant provided no explanation for this discrepancy.
39. The Tenant also had no explanation regarding why these documents, which he purported to be "lease agreements" did not contain any other terms or conditions regarding the tenancy arrangement.
40. The Tenant provided the Board with a third document which he called a "bill of sale" (**Document C**) for Unit #2. This document is dated August 27, 2015, identifies Unit #2 and confirms that the Tenant paid \$3,000.00 for the unit on August 27, 2015. However, Document C has a different sale date for Unit #2 than is listed in Document A. The Tenant had no explanation for this discrepancy.
41. The Landlord says that she is not aware of any agreement the Tenant had with the previous owners, and she doubts the veracity of the documents before me. The Landlord says that the Trustee called her and told her that the monthly rent is \$512.50 for Unit #2, \$359.09 for Unit #19 and \$435.79 for Unit #24.

42. The Landlord says she has no reason to doubt these figures because all of the tenants in the association described above had no dispute regarding the monthly rent figures she obtained from the Trustee. She saw no reason to view the amounts for the Tenant any differently.
43. The Landlord says she gave the Tenant every opportunity to provide her with the alleged lease agreement but the Tenant only emailed her Document B and C and a third “bill of sale” document. The Landlord forwarded the documents to her real estate lawyer who suggested they were not legitimate lease agreements. The Landlord says when she tried to discuss the documents with the Tenant and ask questions, the Tenant was evasive and would not explain the documents or answer her concerns.
44. At the hearing, the Landlord showed the Board an exchange of text messages in which she asks the Tenant to print out the “lease agreements” for the three units because the documents are difficult to read. The Tenant tells her that he is out of town, and then he does not respond any further.
45. Based on the evidence before me, I find the Tenant’s evidence on this point is not credible. I am not satisfied that the Tenant had a lease agreement with the previous landlords that contains a different amount of monthly rent than what is being claimed in the applications before me. The documents the Tenant provided at the hearing were vague, unclear and contained numerous discrepancies. The Tenant could not provide a valid explanation for the various errors and inconsistencies. I am satisfied that these documents are not valid lease agreements and the monthly rent amounts the Landlord obtained through the Trustee are accurate and valid.
46. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act. In particular, I have considered that the Tenant is living in Unit #19 and his older children live with him on a part-time basis. The Tenant says that, due to a rental housing shortage in his area, it will likely take him one year to either find a new place to live or to sell the units and move. I have also considered that the Tenant has failed to make any payments towards the rent since October 2015 and the arrears are now quite substantial. I have also considered the fact that the Tenant furnished documents to the Board which were, at best, misleading, and at worst, fraudulent. As such, the Tenant comes to the Board with “unclean hands” and disentitles himself to any discretion the Board may exercise to grant relief from eviction. For these reasons, I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
47. This order contains all the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. Unless the Tenant voids the order as set out below, the tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before April 2, 2018.

2. The Tenants shall pay to the Landlord \$11,024.84*, which represents the amount of rent owing and compensation up to March 22, 2018.
3. The Tenants shall also pay to the Landlord \$11.81 per day for compensation for the use of the unit starting March 23, 2018 to the date they move out of the unit.
4. The Tenants shall also pay to the Landlord \$175.00 for the cost of filing the application.
5. If the Tenants do not pay the Landlord the full amount owing* on or before April 2, 2018, the Tenants will start to owe interest. This will be simple interest calculated from April 3, 2018 at 3.00% annually on the balance outstanding.
6. If the unit is not vacated on or before April 2, 2018, then starting April 3, 2018, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord, on or after April 3, 2018.
8. If the Tenants wish to void this order and continue the tenancy, they must pay to the Landlord or to the Board in trust:
 - i) \$10,947.70 if the payment is made on or before March 31, 2018, or
 - ii) \$11,306.79 if the payment is made on or before April 2, 2018**.If the Tenants do not make full payment in accordance with this paragraph and by the appropriate deadline, then the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. The Tenants may make a motion to the Board under subsection 74(11) of the Act to set aside this order if they pay the amount required under that subsection on or after April 3, 2018 but before the Sheriff gives vacant possession to the Landlord. The Tenants are only entitled to make this motion once during the period of the tenancy agreement with the Landlord.

March 22, 2018
Date Issued

Laura Hartslief
Member, Landlord and Tenant Board

Toronto East-RO
2275 Midland Avenue, Unit 2
Toronto ON M1P3E7

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

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on October 3, 2018 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

- * Refer to section A on the attached Summary of Calculations.
- ** Refer to section B on the attached Summary of Calculations.

**Schedule 1
SUMMARY OF CALCULATIONS**

File Number: TEL-81898-17

A. Amount the Tenants must pay if the tenancy is terminated:

| Reasons for amount owing | Period | Amount |
|---|---------------------------------|---|
| Arrears: (up to the termination date in the Notice of Termination) | October 1, 2015 to May 31, 2017 | \$7,540.89 |
| Plus compensation: (from the day after the termination date in the Notice to the date of the order) | June 1, 2017 to March 22, 2018 | \$3,483.95 |
| Amount owing to the Landlord on the order date: (total of previous boxes) | | \$11,024.84 |
| Additional costs the Tenants must pay to the Landlord: | | \$175.00 |
| Plus daily compensation owing for each day of occupation starting March 23, 2018: | | \$11.81 (per day) |
| Total the Tenants must pay the Landlord if the tenancy is terminated: | | \$11,199.84, + \$11.81 per day starting March 23, 2018 |

B. Amount the Tenants must pay to void the eviction order and continue the tenancy:

1. If the payment is made on or before March 31, 2018:

| Reasons for amount owing | Period | Amount |
|--|-----------------------------------|--------------------|
| Arrears: | October 1, 2015 to March 31, 2018 | \$10,772.70 |
| Additional costs the Tenants must pay to the Landlord: | | \$175.00 |
| Total the Tenants must pay to continue the tenancy: | On or before March 31, 2018 | \$10,947.70 |

2. If the payment is made after March 31, 2018 but on or before April 2, 2018:

| Reasons for amount owing | Period | Amount |
|--|-----------------------------------|--------------------|
| Arrears: | October 1, 2015 to April 30, 2018 | \$11,131.79 |
| Additional costs the Tenants must pay to the Landlord: | | \$175.00 |
| Total the Tenants must pay to continue the tenancy: | On or before April 2, 2018 | \$11,306.79 |

2018 CanLII 42818 (ON LTB)