

Ontario Landlord and Tenant Board

Panel: Lorraine Mathers, Member

Decision: November 26, 2018.

File Numbers: **SWL-17187-18-RV** and SWT-18517-18-RV

2018 LNONLTB 4536

Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

(18 paras.)

Review Order

1 CF (the 'Landlord') applied for an order to terminate the tenancy and evict KH and RH (the 'Tenants') because the Landlord requires possession of the rental unit for the purpose of residential occupation. The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

2 The Tenants applied for an order determining that the Landlord failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards (the 'T6 Application').

3 This application was resolved by order SWL-17187-18 issued on September 8, 2018.

4 On October 24, 2018, the Tenants requested a review of the order.

5 The request was heard in Waterloo on November 21, 2018. The Tenants attended the hearing and were represented by JR. The Landlord attended the hearing and was represented by TN.

6 The Board considered all the issues raised in the review request and, upon listening to the hearing recording limited the review hearing to whether the Member considered Section 48.1, 55.1 and 83.4 when terminating the tenancy. The T6 application was not part of the scope of the review hearing and remains unchanged.

7 The review request was allowed.

Determinations:

L2 Application:

8 1. For the reasons stated below and based on the evidence before me and after listening to the hearing recording, I find the Order contained a serious error in law as section 55.1 and 83.4 were not considered in determining the L2 Application. Therefore the L2 Application must be dismissed.

9 2. The parties agreed that the Landlord did not pay to the Tenants compensation pursuant to section 55.1 of the *Residential Tenancies Act, 2006* which states:

If the landlord is required to compensate a tenant under section 48.1, 52, 54 or 55, the landlord shall compensate the tenant no later than on the termination date specified in the notice of termination of the tenancy given by the landlord under section 48 or 50. 2017, c. 13, s. 9.

10 3. The Landlord served the Notice to Terminate at End of the Term for Landlord's or Purchaser's Own Use (N12) with a termination date of July 31, 2018 to the Tenants on May 18, 2018. Under section 55.1 the Landlord is required to compensate the Tenants no later than the termination date in the N12 Notice and that did not occur.

11 4. The Landlord testified that he would have made the payment had he known but because there was a disruption with his representation, apparently this information fell through the cracks and the Landlord was never made aware of his obligation.

12 5. The Tenants argued that the requirement under section 55.1 is absolute and the Member has no discretion to vary the requirement.

13 6. The Tenants further argued that if the Landlord failed to comply with section 55.1 then under section 83.4 the Member cannot terminate the tenancy. Section 83.4 states:

The Board shall not issue an eviction order in a proceeding regarding termination of a tenancy for the purposes of residential occupation, demolition, conversion to non-residential rental use, renovations or repairs until the landlord has complied with section 48.1, 52, 54 or 55, as the case may be.

Findings:

14 7. I find there was a serious error in the Order because the Member failed to consider sections 55.1 and 83.4 when making these determinations.

15 8. The requirement for the Landlord to compensate the Tenant under section 55.1 of the Act is a strict requirement and not discretionary. On the plain reading of section 55.1 there is no leeway with respect to the time frame in which the payment must be made. The section clearly states compensation must be paid no later than on the termination date specified. Had the legislature contemplated a later date by which the compensation could be paid, then that would have been reflected in the wording of section 55.1.

16 9. The issue was raised by the Tenants at the hearing, but the Order failed to reflect any consideration of these sections even though the Member indicated to the parties at the hearing the failure to make the payment pursuant to section 55.1 was a problem for the Landlord.

17 10. The Landlord suggested that should termination of the tenancy be denied, the Landlord would suffer financial hardship as he is recently retired and with limited funds. However, there is no mechanism in law to circumvent the requirement under section 55.1. Therefore pursuant to section 83.4, no order for termination based on an N12 notice can issue. This of course does not prevent the Landlord from serving a new N12 Notice and applying again to the Board.

18 It is ordered that:

1. Order SWL-17187-18 issued on September 8, 2018 is varied in the following manner:
2. Paragraphs 1 through to 6 are deleted and are of no force and effect. The Landlord cannot enforce these eviction provisions.
3. The Landlord's L2 application is dismissed.
4. The part of the order relating to the T6 application (paragraphs 7 and 8) remains unchanged and in effect.

November 26, 2018

Date Issued

Lorraine Mathers
Member, Landlord and Tenant Board

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