




Order under Section 69
Residential Tenancies Act, 2006

File Number: SOL-26366

In the matter of: C, 15 Morris St
Guelph ON N1E 5M1

Between:	Ben Fenlon	I hereby certify this is a true copy of an Order	Landlord
	and	 _____ (S. Billone)	
	Tyson Henning	Dated <u>Mar 2/10</u> _____ Landlord and Tenant Board	Tenant

Ben Fenlon (the 'Landlord') applied for an order to terminate the tenancy and evict Tyson Henning (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard in Guelph on February 16, 2010.

The Landlord and the Tenant attended the hearing.

The amount of the arrears is disputed by the Tenant. The Tenant also disputes the Notice to End a Tenancy Early for Non-payment of Rent, the Application and the Notice of Hearing.

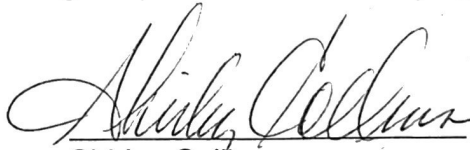
Determinations:

1. The Landlord served the Notice of Hearing, the Application, and Notice of Termination Form N4 on the Tenant in accordance with the Rules of Practice of the Board.
2. The Tenant has not paid the total rent he was required to pay for the period from December 1, 2009 to February 28, 2010. Because of the arrears, the Landlord served a Notice of Termination effective January 18, 2010.
3. The Landlord collected a rent deposit of \$675.00 from the Tenant and this deposit is still being held by the Landlord.
4. Interest on the rent deposit is owing to the Tenant for the period from November 2, 2009 to January 18, 2010.
5. The Tenant paid \$200.00 after the application was filed.
6. 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 postpone the eviction until March 15, 2010 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before March 15, 2010.
2. The Tenant shall pay to the Landlord \$1,187.13*, which represents the amount of rent owing and compensation up to March 2, 2010, less the rent deposit and interest the Landlord owes on the rent deposit.
3. The Tenant shall also pay to the Landlord \$22.59 per day for compensation for the use of the unit starting March 3, 2010 to the date he moves out of the unit.
4. The Tenant shall also pay to the Landlord \$170.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing* on or before March 13, 2010, the Tenant will start to owe interest. This will be simple interest calculated from March 14, 2010 at 2.00% annually on the balance outstanding.
6. If the unit is not vacated on or before March 15, 2010, then starting March 16, 2010, 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 March 16, 2010.
8. If, on or before March 15, 2010, the Tenant pays the amount of \$2,718.60** to the Landlord or to the Board in trust, this order for eviction will be void. This means that the tenancy would not be terminated and the Tenant could remain in the unit. If this payment is not made in full and on time, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. The Tenant 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 March 16, 2010 but before the Sheriff gives vacant possession to the Landlord. The Tenant is only entitled to make this motion once during the period of the tenancy agreement with the Landlord.

March 2, 2010
Date Issued


Shirley Collins
Member, Landlord and Tenant Board

Southern Region
6th floor, 119 King Street West
Hamilton ON L8P 4Y7

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 September 16, 2010 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: SOL-26366

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

Reasons for amount owing	Period	Amount
Arrears: (up to the termination date in the Notice of Termination)	December 1, 2009 to January 18, 2010	\$1,093.79
Less the amount the Tenant paid to the Landlord		-\$200.00
Plus compensation: (from the day after the termination date in the Notice to the date of the order)	January 19, 2010 to March 2, 2010	\$971.37
Less the rent deposit:		-\$675.00
Less the interest owing on the rent deposit:	November 2, 2009 to January 18, 2010	-\$3.03
Amount owing to the Landlord on the order date: (total of previous boxes)		\$1,187.13
Additional costs the Tenant must pay to the Landlord:		\$170.00
Plus daily compensation owing for each day of occupation starting March 3, 2010:		\$22.59 (per day)
Total the Tenant must pay the Landlord if the tenancy is terminated:		\$1,357.13, + \$22.59 per day starting March 3, 2010

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

Reasons for amount owing	Period	Amount
Arrears:	December 1, 2009 to March 31, 2010	\$2,748.60
Less the amount the Tenant paid to the Landlord		-\$200.00
Additional costs the Tenant must pay to the Landlord:		\$170.00
Total the Tenant must pay to continue the tenancy:	On or before March 15, 2010	\$2,718.60

REASONS

In the matter of: C, 15 Morris St
Guelph ON N1E 5M1

Between: Ben Fenlon

Landlord

and

Tyson Henning

Tenant

Reasons to Order SOL-26366 issued on March 2, 2010 by Shirley Collins.

Service of Documents

The Tenant admits he received several notices from the Landlord but denies receiving the N4 Notice that is the subject of this Application. The Tenant also claims he did not receive the application filed by the Landlord. He claims he received the letter to him by the Board.

The certificate of service dated January 19, 2010 signed by the Landlord indicates the N4 was served on the Tenant on January 2, 2010 by leaving the document(s) in the mailbox. A second certificate of service indicates the Notice was served. The Landlord testified that the application was attached to the Notice.

The certificate of service dated January 19, 2010 indicates the Notice of Hearing was served by the Landlord on the Tenant by sending the document(s) by mail or Xpresspost to the last known address of the person(s) at: 15 Morris St. Apt. C, Guelph, ON. The Landlord testifies that the application was part of the package he mailed from the post office, located next to the Board office in Toronto. The Landlord produced a post office receipt at the hearing however he did not have a copy for the Tenant. As the Landlord was not aware the Tenant would be raising this issue on the day of the hearing, the Landlord was instructed to submit copies post-hearing.

I prefer the evidence of the Landlord. There is a history to this relationship. This is the fifth application between these Parties at the Board. The Landlord's post office receipt indicates an item was mailed to the Tenant. It is improbable that the Tenant would not receive the N4 delivered by hand to his mailbox and would not receive the Application and Notice of Hearing mailed to him to his correct address. On a balance of probabilities, I find that the Landlord properly served the Notice of Hearing and Application, as well as a valid Notice of Termination Form N4 on the Tenant in accordance with the Rules of Practice of the Board.

Unsolicited Post Hearing Submissions

The Tenant filed two post hearing submissions on February 17, 2010 and February 18, 2010. I have reviewed and considered these submissions and denied the requests as they do not materially change my determinations.

Amount of Arrears

The Tenant testified that the last full month rent he paid was applied to October, 2009. He paid \$150.00 on November 1, 2009. He received \$200.00 from the Salvation Army and paid this sum to the Landlord after January 8, 2010. He argues this amount should be applied to the arrears in this application and not the previous order.


The Landlord submitted that the arrears claimed in this application are December, 2009 and January, 2010. Any payment from the Tenant, including the \$200.00 payment from the Salvation Army in January, should be applied to the first money owing, the previous order.

It is a common law principle that the debtor decides the debt to which the money is to be applied. In this case, the Tenant wishes to have the money applied to the arrears owing in this application therefore I find there has been a payment of \$200.00 by the Tenant paid to the Landlord after January 8, 2010 towards the arrears in this application.

Section 83 Relief

The Tenant submitted that he was starting a new job on February 22, 2010 and would be able to pay his arrears. It would not be unfair to the Landlord to extend the eviction date to March 15, 2010 to provide the Tenant more time to pay the Landlord the arrears of rent.

March 2, 2010
Date Issued


Shirley Collins
Member, Landlord and Tenant Board

Southern Region
6th floor, 119 King Street West
Hamilton ON L8P 4Y7

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on September 16, 2010 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.