



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Rice v Hortensius, 2023 ONLTB 48515

Date: 2023-07-11

File Number: LTB-L-031993-22

In the matter of: 1, 294 Fourth Street
Midland Ontario L4R3T8

Between: Warren Rice
Christine Rice

and

Karen Ann Hortensius
Bradley Crnkovich

and

Andrew Brown

I hereby certify this is a
true copy of an Order dated
JUL 11, 2023
Landlord and Tenant Board

Landlord

Tenant

Potential Party

Warren Rice and Christine Rice (jointly referred to as the 'Landlord' in this Order) applied for an order to terminate the tenancy and evict Karen Ann Hortensius and Bradley Crnkovich (jointly referred to as the 'Tenant' in this Order) because the Tenant:

- did not pay the rent that the Tenant owes ('L1 Application'); and
- has been persistently late in paying the Tenant's rent ('L2 Application').

This application was heard by videoconference on August 8, 2022, and adjourned on terms provided in Interim Order LTB-L-031993-22 dated August 16, 2022.

At the return of the hearing by videoconference on June 26, 2023, the Landlord's Legal Representative, Bitia DiLisi, the Landlord, Christine Rice, the Tenant Hortensius, on behalf of both tenants, and the Potential Party's Legal Representative, Teri Landriault, attended. The Tenant present spoke with Duty Counsel prior to the start of the proceeding.

Determinations:

1. On February 2, 2022, after the application was filed, ownership of the property in which the rental unit is located transferred to the Potential Party, Andrew Brown.
2. As a result, the Landlord, now former landlord, only sought arrears for two months to the end of January 2022. The parties agreed the lawful monthly rent was \$1,575.00.
3. The Potential Party's Representative, i.e the current landlord's representative, confirmed all arrears prior to sale have been assigned to the Landlord.

4. The Tenant admitted two months of rent was owed to the Landlord to the end of January 2022.
5. As a result, an order shall issue for the Tenant to pay the Landlord \$3,150.00.
6. The Landlord sought their costs of filing the application in the amount of \$201.00 and for interest to begin to accrue on any amounts not paid in the normal course.
7. The Tenant requested interest not begin to accrue for a period of one year. She also submitted the costs of the filing fee should not be ordered as, in essence, she claims the landlords, both former and current, owe her compensation.
8. The Tenant has filed applications with respect to her tenancy against both landlords and referenced proceedings in Small Claims Court. However, at the hearing on June 26, 2023, the Tenant confirmed she did not intend to proceed with any claims under s. 82 of the *Residential Tenancies Act, 2006* (the 'Act').
9. I do not find the above circumstances sufficient to depart from the customary awarding of the filing fee to a successful party in accordance with the Board's *Interpretation Guideline 3: Costs*.
10. The Tenant was aware she owed rent to the Landlord and there was no indication her obligation to pay rent was suspended due to any claims she may have against the Landlord. As a result, the Tenant shall be ordered to pay the Landlord their costs of filing this application. Similarly, I find interest shall accrue commencing eleven days after the date of this Order.
11. With respect to the L2 Application, the Landlord elected to withdraw it and the Board consented to this request.

Costs

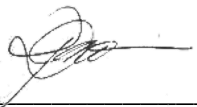
12. Much of the time at the hearing on June 26, 2023, was spent hearing submissions related to costs from both the Landlord's Representative and Potential Party's Representative.
13. Each representative requested costs in the amount of \$600.00 for their time spent preparing for and attending the hearing on June 26, 2023, and, in the case of the Landlord's Representative, for two hours for their attendance at the first hearing on August 8, 2022.
14. As provided in the Board's *Interpretation Guideline 3: Costs*, "costs to a successful party for the preparation/representation fees paid to a legal representative are generally only awarded in cases of unreasonable conduct." Additionally, the Guideline provides "conduct is unreasonable if it causes undue expense or delay."
15. For the reasons set out below, I do not find the conduct of the Tenant rises to the level required to warrant an award of costs.

16. While the Tenant requested the August 8, 2022, hearing be adjourned so she could engage representation, the adjournment was also granted in part because the property had sold, the new owner was not on notice, and the Landlord did not have evidence pre-sale arrears had been assigned to them. As a result, absent resolution or withdrawal, the Landlord, and any representative, were required to reattend, and when the return was scheduled was not set by the Tenant. As a result, I do not find the Tenant's request for an adjournment caused undue delay or expense.
17. At the return on June 26, 2023, the Tenant was not represented. The Tenant submitted she had retained representation, but given the passage of time and cost, this representative had only represented her at an earlier hearing and she could no longer afford their services. The Tenant spoke with Duty Counsel at the outset of the hearing on June 26, 2023.
18. I do not accept the submission that the Tenant's consultation with Duty Counsel caused undue expense or delay for either party. In fact, I find the Tenant's consultation with Duty Counsel abbreviated the proceedings as she submitted it was because of this consultation she determined she would not pursue any claims under s. 82 of the Act at the hearing.
19. Whether the Tenant knew, or ought to have known, the legal principles on which she indicated she based her decision earlier was raised. Even had the Tenant known the full potential consequences of the choice to proceed with her claims under s. 82, I am not satisfied the act of advancing her claims – including overlapping outstanding applications - under s. 82 was unreasonable. What really seemed to be in issue was the timing of the Tenant's delivery of materials.
20. In the week before the hearing of June 26, 2023, the Tenant delivered documents that included evidence relevant to her T2 and T6 applications against both the Landlord and Potential Party. This was beyond the deadlines for disclosure established in the Interim Order.
21. A failure to comply with an Interim Order is on its face unreasonable. Nonetheless, given the materials relate to outstanding applications between the parties, time spent reviewing these documents is directly applicable to other ongoing applications and so, while there may have been some additional expense incurred, I do not find the overall expenses incurred by the parties with respect to the Tenant's materials rise to the level of undue.
22. I accept that since the Tenant did not pursue issues under s. 82 of the Act there was likely no need for the Potential Party's Representative to attend on June 26, 2023. Nonetheless, in lieu of an attendance, the Potential Party's Representative would still have spent some time to ensure there were instructions and communications to address the issue of the assignment of arrears. Additionally, given the majority of the hearing time was spent on issues related to costs which I have found are not warranted, I do not find the Tenant's conduct gave rise to undue expense in terms of the Potential Party's Representative's attendance at the hearing.
23. In the above circumstances, I do not find the Tenant's conduct was unreasonable. The Landlord's and Potential Party's requests for costs are denied.

It is ordered that:

1. The Tenant shall pay to the Landlord \$3,351.00 which represents the amount of rent owing and compensation up to January 21, 2022 (\$3,150.00), the cost of filing the application (\$201.00).
2. If the Tenant does not pay the Landlord the full amount owing to them respectively, on or before July 22, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 23, 2023, at 6.0% annually on the balance outstanding.
3. The Landlord's L2 Application is dismissed.

July 11, 2023
Date Issued



Rebecca Case
Vice Chair, Landlord and Tenant Board

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