



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Haydt v Davis, 2022 ONLTB 13515

**Date:** 2022-12-01

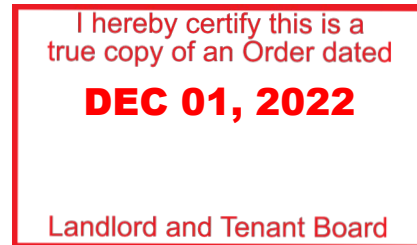
**File Number:** LTB-L-012268-22

**In the matter of:** Upper 1, TOWNLINE ST GD 0  
ST WILLIAMS ON N0E1P0

**Between:** Noel Haydt

**And**

Kalynn Davis



Landlord

Tenant

Noel Haydt (the 'Landlord') applied for an order to terminate the tenancy and evict Kalynn Davis (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on September 12, 2022. The Landlord and the Landlord's legal representative attended the hearing.

I waited until after 1:30 to call the matter, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

**Determinations:**

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,200.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$39.45. This amount is calculated as follows: \$1,200.00 x 12, divided by 365 days.
5. The Tenant has paid \$1,000.00 to the Landlord since the application was filed.
6. At the hearing, the Landlord's uncontested evidence was that the building was sold on April 30, 2022, after the L1 application was filed. While the last month rent deposit was transferred to the new Landlord, the arrears for the period ending April 30, 2022 were not. As such, the applicant Landlord, who is now the former Landlord, seeks an order for the arrears that are owed for the period they owned the property.
7. The definition of "landlord" in subsection 2(1) of the Act reads as follows:

landlord includes:

- (a) the owner of a rental unit or any other person who permits occupancy of a rental unit, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit,
- (b) the heirs, assigns, personal representatives and successors in title of a person referred to in clause (a), and
- (c) a person, other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent;

8. Section 18 of the Act says: "Covenants concerning things related to a rental unit or the residential complex in which it is located, run with the land, whether or not the things are in existence at the time the covenants are made." It is commonly accepted that what this provision means is that when a property is sold and there are sitting residential tenants, the tenancy agreements "run with the land" meaning they remain in place on the same terms and conditions as existed prior to the sale. The new owner steps into the shoes of the old landlord.
9. The primary purpose of the provision was to abolish the common law distinction between covenants *in esse* (which ran with the land) and covenants *in posse* (which did not). At common law examples of covenants which have always been said to run with the land include the obligation to pay rent and the landlord's obligation to provide the tenant with quiet enjoyment. As a result of section 18 of the Act it is quite commonplace for successor landlords to bring applications for arrears of rent where the arrears of rent owing cover the period both before (that they have inherited) and after the sale.
10. In this case, based on the evidence before the Board I find that the applicant Landlord is entitled to an order for the arrears that are owing to them. I say this because at the time the application was filed, on March 2, 2022, the former Landlord was still the Landlord in accordance with the definition under the Act. Further, the arrears being claimed by the (now) former Landlord are owed to them and have not transferred to the new Landlord. Furthermore, the parties expressly agreed within the properties purchase and sale agreement that the arrears were not transferred to the new Landlord for the period that they did not own the building.
11. The rent arrears owing to April 30, 2022 are \$3,479.53.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
13. The Landlord is no longer holding a last month's rent deposit as this has been transferred to the new Landlord.

**It is ordered that:**

1. The Tenant shall pay to the Landlord \$3,665.53. This amount includes rent arrears owing up to April 20, 2022 and the cost of filing the application.
2. If the Tenant does not pay the Landlord the full amount owing on or before December 12, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 13, 2022 at 4.00% annually on the balance outstanding.

**December 1, 2022**  
**Date Issued**



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Curtis Begg  
Member, Landlord and Tenant Board

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