



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

Citation: Mcintyre v Craig, 2023 ONLTB 16767

Date: 2023-01-27

File Number: LTB-L-014090-22

In the matter of: 79 Roseford Terrace
Acton ON L7J2L2

Between: Scott Mcintyre Landlord

And

Andrew Burnett and Stacey Craig Tenants

Scott Mcintyre (the 'Landlord') applied for an order to terminate the tenancy and evict Andrew Burnett and Stacey Craig (the 'Tenant') because the Tenants have been persistently late in paying the Tenants' rent.

The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on January 12, 2023.

Only the Landlord and their Representative Alvin Chan attended the hearing.

The hearing block was scheduled to start at 9:00a.m. As of 10:06a.m., the Tenants were 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.

At 10:57a.m the Tenant Stacey Craig called into the hearing but at that point the hearing had already concluded, and the Landlord had left.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. On March 10, 2022, the Landlord gave the Tenants an N8 notice of termination deemed served on March 15, 2022. The notice of termination alleges that the Tenants have been consistently late in paying their rent.
4. I find that the Tenants have persistently failed to pay the rent on the date it was due. The rent is due on the 1 day of each month. The rent has been paid late 22 times in the past 28 months. I make that finding based on the Landlord's rent payment schedule that was

introduced into evidence that showed rent was paid (months not listed where paid on time):

- October 13, 2020 partial payment
- October 21, 2020 remainder paid
- November 2, 2020
- December 11, 2020 partial payment
- December 14, 2020 remainder paid
- January 11, 2021 partial payment
- January 20, 2021 remainder paid
- April 9, 2021
- May 10, 2021
- June 4, 2021
- July 2, 2021
- October 5, 2021
- January 12, 2022
- February 3, 2022
- March 3, 2022
- The rent for April, May, June, and July 2022 was paid July 6, 2022
- No rent has been paid from August 2022 to December 2022.
- January 2023 rent was paid on time and in full.

5. The Landlord testified that he has followed up with the Tenants about the late and outstanding payments monthly.
6. Based on the Monthly rent, the daily compensation is \$72.33. This amount is calculated as follows: \$2,200.00 x 12, divided by 365 days.
7. The Tenants paid no rent between August 2022 to December 2022, but then did pay in January 2023. I will apply that rent to the oldest arrears and award daily compensation from September 1, 2023.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. There is no last month's rent deposit.
10. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. I am not exercising my discretion to preserve the tenancy with a conditional pay on time order because I am not satisfied that the Tenants will abide by it. This is because the Tenants have paid their rent late or not at all 22 times out of the last 28 months and are currently in 5 months of arrears. While I have considered that the Tenants did pay January's 2023 rent on time, that one recent instance of on time payment does not satisfy me that the Tenants will continually pay rent on time. I have also considered the Landlord's testimony that the late and missed payments have affected his ability to pay for his mortgage and he had to take out credit cards and lines of credit to cover the costs. Additionally, the Tenants were not present in

the hearing room at the time that this matter was heard to provide any evidence relevant to my analysis under section 83 of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before February 7, 2023.
2. If the unit is not vacated on or before February 7, 2023, then starting February 8, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. 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 February 8, 2023.
4. The Tenants shall pay to the Landlord \$9,692.05, which represents daily compensation for the use of the unit from September 1, 2022 to January 12, 2023.
5. The Tenants shall also pay the Landlord compensation of \$72.33 per day for the use of the unit starting January 13, 2023 until the date the Tenants moves out of the unit.
6. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. The total amount the Tenants owe the Landlord is \$9,878.05.
8. If the Tenants do not pay the Landlord the full amount owing on or before February 7, 2023, the Tenants will start to owe interest. This will be simple interest calculated from February 8, 2023 at 5.00% annually on the balance outstanding.

January 27, 2023

Date Issued

Amanda Kovats

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

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 of the Tenant expires on August 8, 2023 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.