



Order under Section 69
Residential Tenancies Act, 2006

File Number: SOL-12610-20

In the matter of: 1, 210 LOCK STREET W
DUNNVILLE ON N1A1V2

Between: Marc Pombeiro Landlord

and

Betty Barwell Tenant

Marc Pombeiro (the 'Landlord') applied for an order to terminate the tenancy and evict Betty Barwell (the 'Tenant') because the Tenant has been persistently late in paying the Tenant's rent. The Landlord also applied for compensation because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused undue damage to the premises. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard in via videoconference on July 21, 2021. The Landlord, the Landlord's legal representative, R. Barber, the Tenant and the Tenant's legal representative, M. Dow, attended the hearing.

Preliminary Issue:

Amending Application

1. The Landlord requested to amend the application to withdraw the damages claim. Pursuant to Rule 15.4, I consent to the Landlord's requested amendment.

N8 Invalid for Insufficient Reasons and Details

2. The Tenant submitted that this application should be dismissed because it contains insufficient reasons and details. Specifically, the Landlord neglected to include two payments made by the Tenant in or about October 2019. As such, the details are incomplete, and the notice should be dismissed on this basis.
3. The details and reasons in the N8 notice are reproduced as follows:

Details About the Reasons for this Notice

I have listed below the events that have led me to give you this notice, including the dates and specific details.

1 Jun 2019 Rent Paid	June 4, 2019	\$1,000.00	4 days late
	June 20, 2019	\$400.00	20 days late
1 Jul 2019 Rent Paid	Jul 19, 2019	\$400.00	19 Days Late
	Aug 20, 2019	\$500.00	51 Days late
	Aug 23, 2019	\$500.00	54 Days Late
1 Aug 2019 Rent Paid	Sep 6, 2019	\$600.00	37 Days Late
	Sep 20, 2019	\$600.00	51 Days Late
1 Sep 2019 Rent Paid	Oct 18, 2019	\$700.00	69 Days Late/48 Days Late
	Oct 31, 2019	\$500.00	61 Days Late
1 Oct 2019 Rent paid	Nov 20, 2019	\$700.00	81 Days Late/51 Days Late
	Dec 28, 2019	\$200.00	89 Days Late
1 Nov 2019 Rent Paid	Dec 31, 2019	\$700.00	92 Days Late
1 Dec 2019 Rent	\$1,400 & 1 Jan 2020 Rent \$1,400 – NO RENT PAID, TENANT CURRENTLY UNEMPLOYED		

2021 CanLII 117231 (ON LTB)

4. The Landlord’s representative submitted that the two payments do not invalidate the notice because neither payment changed the fact that the rent was paid late. I agree.
5. The application is with respect to persistent late payment. In the N8 notice, the Landlord detailed the rental period, the date of the payments for the rental period, the amounts paid by the Tenant and the number of days late. In my view, these details include the precise dates and substance of the allegations and allow the Tenant to fully and properly respond to the application. Further, the absence of two payments do not compromise the Tenant’s ability to respond to the application because the payments were nonetheless incomplete and not paid on the first of the month. As such, I find that the Landlord’s application is not dismissed on this basis.

Determinations:

6. The Landlord was seeking an order to terminate the tenancy and evict the Tenant has been persistently late in paying the Tenant's rent. The Tenant was served with a notice of termination on January 14, 2020.
7. The tenancy commenced on April 1, 2019.
8. This is a month to month tenancy. Rent is due on the first of each month.
9. Based on the Landlord’s testimony, the Tenant was late in paying rent 8 times in 8 months.
10. The Tenant has persistently failed to pay the rent on the date it was due.
11. 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

grant relief from eviction subject to the condition(s) set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

12. The Tenant submitted that the reason her rent payments were late was because her income arrived on a bi-weekly basis. However, she submitted she would be able to pay the lawful monthly rent in full and on time as she understands the tenancy could be terminated if she did not. As termination is the remedy of last resort, I find a pay-on-time order to be appropriate. The Tenant appears willing and able to pay the rent in full and on time and as such, she should be afforded another opportunity to preserve the tenancy.

It is ordered that:

1. The Landlord's application for eviction of the Tenant is denied on the condition that:
 - a) The Tenant shall pay the full monthly rent on or before the first day of each month, commencing September 1, 2021 and for 12 months thereafter up to and including August 1, 2022.
2. If the Tenant fails to comply with the conditions set out in paragraph 1 above, then, within 30 days of the breach, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition set out in paragraph 1 of this order.
3. The Tenant shall also pay to the Landlord \$175.00 for the cost of filing the application. If the Tenant does not pay the Landlord the full amount owing on or before September 4, 2021, the Tenant will start to owe interest. This will be simple interest calculated from September 5, 2021 at 2.00% annually on the balance outstanding.

August 24, 2021
Date Issued



Camille Tancioco
Member, Landlord and Tenant Board

Southern-RO
119 King Street West, 6th Floor
Hamilton ON L8P4Y7

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