



Order under Section 69 Residential Tenancies Act, 2006

Citation: Eshak v Perkins, 2024 ONLTB 37247

Date: 2024-05-16 **File Number:** LTB-L-079634-22-HR

In the matter of: TOP FLOOR, LEFT 1ST ROOM, 14
CHAPEL ST N
THOROLD ON L2V2E1

Between: Ayman Eshak Landlord

And

Dwayne William Perkins Tenant

Ayman Eshak (the 'Landlord') applied for an order to terminate the tenancy and evict Dwayne William Perkins (the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes (L1 Application);
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant (L2 Application).

This application was heard by videoconference on January 10, 2024.

Only the Landlord's Legal Representative, Jordan Nieuwhof attended the hearing.

As of 12:42 p.m., 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:

L1 Application – Non-Payment of Rent

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 \$500.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$16.44. This amount is calculated as follows: \$500.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to January 31, 2024 are \$8,500.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$500.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
9. Interest on the rent deposit, in the amount of \$28.26 is owing to the Tenant for the period from April 1, 2021 to January 10, 2024.
10. The Landlord's Legal Representative testified that the Tenant has not paid any rent since August 2022 and the Landlord has made many attempts to establish a repayment plan with no response from the Tenant.

L2 Application – Interfering with Others, Damage or Overcrowding

11. The residence is a triplex with tenants renting individual bedrooms and sharing a common kitchen and washrooms. The Landlord's Legal Representative stated the Landlord does not reside in the premises.
12. On November 22, 2022, the Landlord served the Tenant with a first, voidable *Notice to End the Tenancy for Interfering with Others, Damage or Overcrowding* (Form N5) under section 64 of the Act alleging that on November 21, 2022, another resident complained to the Landlord that the Tenant was using an illicit substance ("crack cocaine") causing considerable odour in the residence and impacting the quiet and reasonable enjoyment by another tenant in the residence.
13. On December 18, 2022, the Landlord served the Tenant with a second *Notice to End the Tenancy for Interfering with Others, Damage or Overcrowding* (Form N5) alleging on November 29, 2022, another resident complained to the Landlord that the Tenant was using an illicit substance ("crack cocaine") causing considerable odour in the residence and impacting the quiet and reasonable enjoyment by another tenant in the residence.
14. The second N5 notice was served pursuant to section 68 of the Act. That section entitles the Landlord to serve a non-voidable N5 if more than 7 days but less than 6 months following the service of a voidable N5 notice the Tenant engages in conduct that constitutes grounds or a notice of termination under section 64 of the Act. As there is no ability to void the second N5 notice, the Landlord was entitled to file the application to evict the Tenant on January 2, 2023.

15. Section 64 of the Act states:

64 (1) A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

16. The Landlord's Representative stated that the other tenants who made complaints have subsequently moved out of the residence as a result of the Tenant's behaviour.

17. I accept the uncontested testimony of the Landlord's Legal Representative and find that the Landlord proved, on a balance of probabilities, that the Tenant and or their guests have substantially interfered with the Landlord's and the other tenants' reasonable enjoyment of the residence.

Relief from eviction

18. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

19. Regarding the L1 Application, I find that it would be unfair to deny eviction. The Tenant has made no rent payment since August 2022 and has not responded to any efforts made by the Landlord to establish a repayment for the rent arrears and the rent arrears have become substantial. To deny or delay termination of the tenancy on this basis would be prejudicial to the Landlord.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated on May 27, 2024.
2. The Tenant shall pay to the Landlord \$7,822.14. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
3. The Tenant shall also pay the Landlord compensation of \$16.44 per day for the use of the unit starting January 11, 2024 until the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlord the full amount owing on or before May 27, 2024, the Tenant will start to owe interest. This will be simple interest calculated from May 28, 2024 at 7.00% annually on the balance outstanding.

5. If the unit is not vacated on or before May 27, 2024, then starting May 28, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 May 28, 2024.

May 16, 2024

Date Issued

Charles Dowdall
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 expires on November 28, 2024 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay since the tenancy is terminated

Rent Owing To Hearing Date	\$8,164.40
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$500.00
Less the amount of the interest on the last month's rent deposit	- \$28.26
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$7,822.14
Plus daily compensation owing for each day of occupation starting January 11, 2024	\$16.44 (per day)

2024 ONLTB 37247 (CanLI)