



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

CMD

Citation: Klein v Gersenyi, 2024 ONLTB 12940
Date: 2024-03-07 **File Number:** LTB-L-008647-23-HR

In the matter of: UNIT #1, 45 TOWN LINE
ORANGEVILLE ON L9W1T7

Between: Mary Klein Landlord

And

Robert Gersenyi Tenant

Mary Klein (the 'Landlord') applied for an order to terminate the tenancy and evict Robert Gersenyi (the 'Tenant') because:

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

This application was heard by videoconference on November 22, 2023.

The Landlord's daughter, Kaitlin Klein on behalf of the Landlord and the Tenant attended the hearing.

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 \$1,125.45. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$37.00. This amount is calculated as follows: \$1,125.45 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 November 30, 2023 are \$15,944.50.
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 \$1,085.00 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 \$80.29 is owing to the Tenant for the period from April 18, 2019 to November 22, 2023.

L2 Application – Persistent Late Payment of Rent

10. The Tenant has persistently failed to pay the rent on the date it was due.
11. The rent is due on the 1st day of each month.
12. On January 23, 2023, the Landlord served the Tenant with an N8 notice alleging the Tenant has persistently paid the rent late. The N8 Notice covers the period from July 2020 to January 2023. From July 2020 to December 2020, the rent was paid late or not paid at all on 4 instances. From January 2021 to December 2021, the rent was paid late or not paid at all on 2 instances. From January 2022 to January 2023 there were no instances where the rent was fully paid or not paid at all.
13. The pattern has continued since the N8 was served. The Tenant has not paid any rent since the filing of the application.
14. I find that the Landlord has proved that the Tenant has paid their rent late persistently.

Section 82

15. The Tenant testified that he had ongoing maintenance and repair issues that were not being addressed; however, the Tenant did not specify the nature of the repair and maintenance issues nor submitted any documentary evidence prior to the hearing. The Tenant also testified that he had been harassed by the Landlord with an illegal entry to his unit but again did not submit any documentary evidence prior to the hearing. The Tenant testified that the communications broke down when the repairs he had requested to his unit were not being completed and as a result the Tenant withheld the rent.
16. Pursuant to section 82 of the *Residential Tenancies Act, 2006* (the 'Act'), a Tenant is permitted to raise any issue that could be the subject of an application if the Tenant complies with disclosure requirements or provides an explanation satisfactory to the Board explaining why the Tenant could not comply. Section 82(2) and LTB Rule of Procedure 19.4 requires the Tenant to give at least 7 days advance written notice to the Landlord of the Tenant's intent to raise the issue at the hearing and a copy of the evidence.

17. The Tenant testified that they did not serve a list of section 82 issues on the Landlord or file it with the Board and did not provide any explanation as to why this was not served to the Landlord or filed with the Board at least 7 days before the hearing. As such, I have not considered the Tenant's evidence regarding the maintenance issues in their unit. However, it should be noted that this does not preclude the Tenant from bringing their own application and may wish to contact their local legal clinic to get advice in this regard.

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. The Landlord's Representative testified that her elderly parents are the owners of the building which is a 100-year-old home which houses four rental units. She testified that her parents have maintained reasonable rents however considering the age of the building, the operational and repair costs are high; therefore, when rent is not paid, this causes financial hardship for her parents to cover the cost of repairs and maintenance from their personal financial resources. The Landlord's Representative submitted that the Tenant's rent accounts for 26% of the total monthly rental income for the building.
20. The Landlord's Representative testified that the Tenant had always maintained open communication with her parents when he would be late with the rent and provide a date when the rent would be paid which was always honoured. The Landlord's Representative testified that this changed in the fall of 2022 when there was limited communication from the Tenant and the rent stopped being paid.
21. The Tenant testified that he has had mental health issues limiting his ability to work and now is in receipt of ODSP (Ontario Disability Support Payment). The Tenant testified that he is also trying to get further assistance from the Dufferin County Mental Health Unit.
22. The Tenant testified about their monthly income and expenses. Based on the testimony provided by the Tenant, the Tenant's expenses exceed their monthly income by \$1,070.45. The Tenant further testified that a government agency was also requesting a repayment of funds however the Tenant did not provide further details. The Tenant testified they were not in any financial position to make any commitment to payment of the rent arrears at this time if at all.
23. The Landlord's Representative sought a standard order for eviction as the Tenant has not made any rent payment since January 2023, is not able to make any payment of the rent arrears and to delay eviction would be financially prejudicial to the Landlord.
24. The Tenant did not seek a conditional order and testified that they would be bound by the decision of the Board.

25. Although, I am sympathetic to the Tenant's situation, I find it would be unfair to the Landlord to deny the eviction. The Tenant testified that they are not in a financial position to pay the rent arrears and based on the monthly deficit of income, I believe the Tenant will not be able to pay the lawful monthly rent moving forward. Ordering the Tenant to pay money they do not have would set them up for failure and increase the financial prejudice to the Landlord.

It is ordered that:

1. The Tenancy between the Landlord and the Tenant is terminated on March 18, 2024.
2. The Tenant shall pay to the Landlord \$14,653.76. 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 Tenant. See Schedule 1 for the calculation of the amount owing.
3. The Tenant shall also pay the Landlord compensation of \$37.00 per day for the use of the unit starting November 23, 2023, 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 March 18, 2024, the Tenant will start to owe interest. This will be simple interest calculated from March 19, 2024 at 7.00% annually on the balance outstanding.
5. If the unit is not vacated on or before March 18, 2024, then starting March 19, 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 March 19, 2024.

March 7, 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 September 19, 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	\$15,633.05
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	- \$1,085.00
Less the amount of the interest on the last month's rent deposit	- \$80.29
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	\$14,653.76
Plus daily compensation owing for each day of occupation starting November 23, 2023	\$37.00 (per day)

2024 ONL TB 12940 (CanLII)