



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

Citation: Qi v O’rourke, 2024 ONLTB 8610

Date: 2024-02-07

File Number: LTB-L-039776-23

In the matter of: 11 HAROLD ST
HAMILTON ON L8S2R7

Between: Xianghua Qi Landlord

And

Ryan Patrick O’rourke Tenants

Katie Amy e O’ rourke

Xianghua Qi (the 'Landlord') applied for an order to terminate the tenancy and evict Ryan Patrick O’rourke and Katie Amy e O’ rourke (the 'Tenants') because:

- the Tenants have been persistently late in paying the Tenant's 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 22, 2024.

The Landlord’s Legal Representative Julie Jing Zhu, the Landlord’s Agent, Alison Yu and the Tenant, on behalf of both Tenants attended the hearing.

Determinations:

1. For the reasons that follow, I find that the Tenants have persistently paid their rent late pursuant to s.58(1)1 of the *Residential Tenancies Act, 2006*. However, I find that it would not be unfair to grant relief from eviction subject to the conditions set out below.
2. On April 24, 2023, the Landlord gave the Tenants an N8 notice of termination deemed served on April 29, 2023. The notice of termination alleges that the Tenants have

persistently failed to pay the rent on the date it was due. The termination date on the N8 notice is June 30, 2023.

3. The rent is due on the 1st day of each month.
4. The Landlord's statement shows that from April 1, 2021, to April 30, 2023, the period included on the N8 notice, the Tenant paid the rent late twenty-five out of twenty-five months.

File Number: LTB-L-039776-23

5. The ledger reflects bi-weekly payments and the Tenants claimed they were experiencing financial difficulties and that the Landlord agreed to bi-weekly payments for the rent but could not confirm the dates that were agreed to, however assumed it was half of the rent on the 1st of the month and the balance two weeks later. The Landlord's Agent disputed there was an agreement to make bi-weekly rent payments, however, indicated there was an agreement for bi weekly payments for the arrears owing.
6. The Landlord's Agent submitted evidence that although no action was taken from April 2021 to when the N8 notice was served, multiple reminders that rent was due on the first of the month were sent to the Tenants; and testified she always tried to resolve the issue with the Tenants.
7. Based on the evidence submitted by the Landlord's Agent that efforts were made to remind the Tenants rent was due on the first of the month, and that the Tenant could only assume the dates of the contested bi-weekly payment agreement; I prefer the evidence of the Landlord's Agent that there was no agreement to accept bi-weekly payments for the monthly rent that came due.
8. The Landlord's Agent also testified that rent has been paid on time since July 2023 and that the last late payment was in June 2023; as a result of an Interim Order issued by Member Hartsliel, regarding an L1 application (LTB-L-012594-23).

Relief from Eviction

9. 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 pursuant to subsection 83(1)(a) of the Act.
10. The Landlord is seeking an Order terminating the tenancy, effective October 31, 2024.

11. The Landlord's Legal Representative submits that the Tenants have a late payment history, and the Landlord has no faith in the Tenants paying the arrears owing and paying the rent on time going forward.
12. The Landlord is a small Landlord of only this rental property and a retired senior with only this income who cannot cover the mortgage when rent is not paid on time or at all.
13. The Tenants have two children ages 10 and 15 that permanently live with them and also two children ages 15 and 18 that stay with them part-time.
14. I find that it would not prejudice the Landlord to grant relief from eviction when the Tenants have been paying the rent on time since July 2023 to the date of the hearing; and have complied with Order LTB-L-012594-23, requiring the Tenants to pay rent on time and pay the arrears owing to the Landlord. Should the Tenant fail to pay the rent on time during the next 12 months, the Landlord has recourse to pursue eviction of the Tenants.
15. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

File Number: LTB-L-039776-23

It is ordered that:

1. The tenancy between the Landlord and the Tenants continues if the Tenants meet the conditions set out below.
2. The Tenant shall pay the Landlord the monthly rent due on or before the first day of each month for the period of March 1, 2024, to February 28, 2025.
3. If the Tenants fails to comply with the conditions set out in paragraph 2 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenants. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenants.
4. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing on or before February 18, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 19, 2024, at 7.00% annually on the balance outstanding.

February 7, 2024

_____ **Date Issued**

Christina Philp
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.

2024 ONL TB 8610 (CanLI)