



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

Citation: 10 Trudelle Apartments Limited v Clark, 2024 ONLTB 5770

Date: 2024-01-29

File Number: LTB-L-037442-23

In the matter of: 405, 10 Trudelle Street
Toronto Ontario M1J1Y9

Between: 10 Trudelle Apartments Limited Landlord

And

Kathryn Clark Tenants
Mary Williams

10 Trudelle Apartments Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Kathryn Clark and Mary Williams (the 'Tenants') 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 December 14, 2023.

The Landlord's Legal Representative Samuel Korman and the Tenant Mary Williams attended the hearing.

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. Therefore, the Tenants shall pay to the Landlord the lawful monthly rent in full and on time for a period of 12 months.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. On April 25, 2023, the Landlord gave the Tenants an N8 notice of termination. The notice of termination alleges that the Tenants paid their rent late 21 times in the 37 months preceding the service of the N8 notice.
4. The Landlord presented a rent ledger confirming all of the payment dates listed on the N8 notice. The Tenant disputed the payment dates but did not provide any specific details on which dates on the Landlord's ledger were incorrect or when she actually paid the rent. She provided no documentary evidence in support of her assertions, evidence that I would have expected the Tenant to have and produce. The landlord bears the burden of establishing that rent was paid late in an application such as this. However, if the tenant disputes the timing of a payment, or alleges that they made a payment that the landlord testified they did not, the tenant typically bear the burden of establishing that they made

2024 ONLTB 5770 (CanLII)

that disputed payment. In these circumstances, I accept the Landlord's evidence regarding the late rent payments.

5. I find that the Tenants have persistently failed to pay the rent on the date it was due. The rent is due on the first day of each month. The rent has been paid late 21 times in the past 37 months.
6. The Landlord confirmed that the rent was paid in full up to December 31, 2023. As such, this order will not require the Tenant to pay compensation up to the hearing date.
7. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.

Relief from eviction

8. 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 conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
9. The Tenant sought relief from eviction under subsection 83(3)(a) of the Act and raised maintenance issues regarding fridge disrepair and pests. The burden of proof is on the Tenant to establish, that the Landlord is in serious breach of their obligations. The Tenant did not lead any evidence regarding the issues raised. As such, I am not satisfied on a balance of probabilities that the Landlord is in serious breach of the Act within the meaning of section 83(3)(a).
10. The Tenant testified that she receives numerous notices of termination from the Landlord which overwhelms her and causes her to pay the rent late. The Tenant testified that she has a physical disability in her knees and sometimes is not able to get to the bank on time to get the funds to pay the Landlord. The Landlord's Representative confirmed that pre-authorized payment is available to the Tenant and the Landlord's staff can help the Tenant to set it up to avoid having to go to the bank. The Tenant testified that she used to pay rent through the Landlord's online portal, but believes the Landlord is overcharging her and returned to paying by cheque as a result.
11. The Tenant testified that she would be significantly prejudiced if she had to vacate the rental unit. According to the Tenant, everything she needs is close by including the grocery store, bank, and doctor. The Tenant believes that the real reason the Landlord filed the application is that they want to re-rent the unit at an increased rent.
12. There is no evidence before me that the Landlord has overcharged the Tenant rent, or that the Landlord intends to re-rent the unit at a higher price. In fact, the Landlord's Representative was agreeable to an order granting the Tenant conditional relief from eviction and consented to postpone the payment of the application filing fee to a date acceptable to the Tenant.
13. In these circumstances, I find would not be unfair to grant relief from eviction by issuing a conditional order requiring the Tenant to pay her rent on time for a period of 12 months.

14. Given that this order is being issued three days before the first payment date, I find it appropriate to postpone the first enforceable payment to March 1, 2024 to ensure the Tenant is not caught unaware.

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 Tenants shall pay the Landlord the monthly rent due on or before the 1st day of the month for the period of March 2024 to February 2025.
3. If the Tenants fail 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 \$201.00 for the cost of filing the application.
5. If the Tenants does not pay the Landlord the full amount owing on or before July 31, 2024, the Tenant will start to owe interest. This will be simple interest calculated from August 1, 2024 at 7.00% annually on the balance outstanding.

January 29, 2024
Date Issued

Kate Sinipostolova
Member, Landlord and Tenant Board

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