



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

Citation: Wittock v Paul, 2024 ONLTB 24716

Date: 2024-04-17

File Number: LTB-L-087076-23

In the matter of: Apt A, 1505 CAMERON ST
THUNDER BAY ON P7C5H1

Between: Roy Wittock Landlord

And

Sarah Hanson

Deanna Paul Tenants

Roy Wittock (the 'Landlord') applied for an order to terminate the tenancy and evict Deanna Paul and Sarah Hanson (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

This application was heard by videoconference on March 27, 2024.

Only the Landlord attended the hearing.

As of 10:27am, the Tenants were 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.

Preliminary issues:

1. The Landlord had requested that the application be amended to reflect the correct rental address of Apt A, 1505 Cameron St, Thunder Bay ON P7C5H1. I consented to this amendment as this is the address that was correctly listed on the N4 notice of termination and the certificate of service and looked to be a simple clerical error.

2. The Landlord also requested that the rent amount indicated in the application of \$5975 was also an error. This amount was the amount of arrears owing up to the date of the application and not the rent owing at the time the application was filed. The rent amount at the time of the application was \$1550.00. This, again, to me seemed to be a misunderstanding on the part of the Landlord and I consented to amend the application to identify the correct rental amount of \$1550.00.
3. The rent increased to \$1600.00 as of January 1, 2024. The Landlord explained that, because the building was completed in December 2018, the unit was exempt from the rental guideline rules set out in s.120 (1) of the Act. S.6.1(2) paragraph 1 of the Act states:

Buildings, etc., not occupied on or before November 15, 2018

(2) Sections 120, 121, 122, 126, 127, 129, 131, 132, 133, 165 and 167 do not apply on and after the commencement date with respect to a rental unit if the requirements set out in one of the following paragraphs are met:

- The rental unit is located in a building, mobile home park or land lease community and no part of the building, mobile home park or land lease community was occupied for residential purposes on or before November 15, 2018.

Based on the uncontested evidence before me, I agree with the Landlord that the building was completed in December 2018, a month after the deadline set out in S.6.1(2) and thus the \$50.00 increase in rent effective January 1, 2024, is deemed lawful.

4. The N4 Notice of Termination claimed a rental period of June 1, 2022 – October 1, 2023, with a total arrears owing of \$7975.00. The issue with the N4 is that the rental period claimed does not correctly identify the end of the rental period, in this case - October 31, 2023. The Landlord testified that this was an error on his part but that the arrears amount included the rent for October 2023 and the calculations in the N4 notice of termination also supported the Landlord's submission. While the N4 notice of termination may not have been to the end of the rental period, I find that the N4 substantially complies with s.59(2) of the Act which states:

Contents of notice

(2) The notice of termination shall set out the amount of rent due and shall specify that the tenant may avoid the termination of the tenancy by paying, on or before the termination date specified in the notice, the rent due as set out in the notice and any additional rent that has become due under the tenancy agreement as at the date of payment by the tenant. 2006, c. 17, s. 59 (2).

5. As the N4 notice of termination correctly set out the amount of rent due and specified that the Tenants could avoid the termination of the tenancy by paying said amount, I find the N4 notice to be valid.

Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenants 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 Tenants was still in possession of the rental unit.
3. The lawful rent is \$1,600.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$52.60. This amount is calculated as follows: \$1,600.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to March 31, 2024, are \$12,325.00.
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 \$1,525.00 from the Tenants 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 \$91.10 is owing to the Tenants for the period from May 1, 2021, to March 27, 2024.
10. 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 Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Landlord testified that he was not aware of any circumstances that would cause me to delay or deny the eviction and none were before me on record.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants voids this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$14,111.00 if the payment is made on or before April 28, 2024. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants has paid the full amount owing as ordered plus any additional rent that became due after April 28, 2024, but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants does not pay the amount required to void this order the Tenants must move out of the rental unit on or before April 28, 2024.**

5. If the Tenants does not void the order, the Tenants shall pay to the Landlord \$10,715.10. 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.
6. The Tenants shall also pay the Landlord compensation of \$52.60 per day for the use of the unit starting March 28, 2024, until the date the Tenants moves out of the unit.
7. If the Tenants does not pay the Landlord the full amount owing on or before April 28, 2024, the Tenants will start to owe interest. This will be simple interest calculated from April 29, 2024, at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before April 28, 2024, then starting April 29, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 April 29, 2024.

April 17, 2024

Date Issued

Richard Dehaan
Member, Landlord and Tenants 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 October 29, 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before April 28, 2024

Rent Owing To April 30, 2024	\$13,925.00
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Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$14,111.00

B. Amount the Tenants must pay if the tenancy is terminated.

Rent Owing To Hearing Date	\$12,145.20
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,525.00
Less the amount of the interest on the last month's rent deposit	- \$91.10
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total amount owing to the Landlord	\$10,715.10
Plus daily compensation owing for each day of occupation starting March 28, 2024	\$52.60 (per day)