



Order under Section 69 Residential Tenancies Act, 2006

Citation: Seidl v McIntyre, 2024 ONLTB 16534

Date: 2024-03-05

File Number: LTB-L-062754-23

In the matter of: 98 BIRCH AVE
HAMILTON ON L8L6H7

Between: Michalina Seidl Landlord
George Essa
Mikhail Issa

And

David McIntyre Tenant
Chantel Bernard
Tammy Pregent

Michalina Seidl, George Essa and Mikhail Issa (the 'Landlord') applied for an order to terminate the tenancy and evict David McIntyre, Chantel Bernard and Tammy Pregent (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes; and determining that 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.

Michalina Seidl, George Essa and Mikhail Issa (the 'Landlord') also applied for an order requiring David McIntyre, Chantel Bernard and Tammy Pregent (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

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

Only the Landlord and the Landlord's Representative, Amanda Richards attended the hearing.

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 however it

appears the Tenant sent an email to reschedule the hearing. The Board provided a form to the Tenant, Tammy Pregent on February 22, 2024 to complete which was not returned. The Tenant was informed in the email that she must submit a Request to Reschedule on consent for each file she wishes to reschedule and she must be prepared to attend and speak to this request at the scheduled hearing if she does not receive notification that their request has been granted. The Tenants were aware of the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

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 were still in possession of the rental unit.
3. The lawful rent is \$2,700.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$88.77. This amount is calculated as follows: \$2,700.00 x 12, divided by 365 days.
5. The Tenant has paid \$9,000.00 to the Landlord since the application was filed.
6. The rent arrears owing to February 29, 2024 are \$15,300.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.

L2 Application:

9. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy

N5 Notice of Termination

On July 5, 2023, the Landlord gave the Tenant an N5 notice of termination with a termination date of July 31, 2023. The notice of termination contains the following allegations: the Tenants have not transferred the utility costs to their name and have unpaid utility costs which have not been paid.

10. The Tenants did not correct the omission within seven days after receiving the N5 notice of termination. The tenancy agreement identifies utilities are the Tenants' responsibility to pay and invoices presented by the Landlord confirms the Tenants have not transferred the account to their name. Alectra Utilities Hamilton sends the invoice to the Landlord who has been paying the utility charges which substantially interferes with the Landlords'

interests, rights and privileges. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).

Utilities:

11. The Tenants failed to pay electricity and/or water costs that they were required to pay under the terms of the tenancy agreement.
12. The Landlord has proven that they incurred reasonable out-of-pocket expenses as a result of the Tenants' failure to pay, electricity and/or water costs from Alectra Utility Hamilton for water and electricity as supported by invoices. The Tenant owes the Landlord costs less the late charges, which rests on the Landlord having paid the invoices late. The total amount owing is \$2,671.59 based the invoices provided as follows:
 - January 31, 2023 invoice date for period from December 29, 2022 to January 24, 2023 is \$110.64. The Tenants are responsible for **\$29.23** pro-rated from 9 days from January 15 to January 24, 2023 which is from the date the Tenants moved into the unit.
 - March 1, 2023 invoice from January 24, 2023 to February 23, 2023 period is **\$415.49**
 - March 28, 2023 invoice from February 23, 2023 to March 24, 2023 period is \$379.23 less late charge of \$2.12= **\$377.11**;
 - May 28, 2023 invoice from March 24, 2023 to April 24, 2023 period is \$412.76 less the late charges of \$10.39 = **\$402.37**
 - May 29, 2023 invoice from April 24 to May 18, 2023 period is \$356.13 less late charge of \$2.13 = **\$354.00**
 - June 28, 2023 invoice from May 18, 2023 to June 23, 2023 is \$506.34 less late charge of \$5.56 = **\$500.78**
 - July 31, 2022 invoice from June 23, 2023 to July 25, 2023 is \$602.15 less late charge of \$9.54= **\$592.61**
13. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
14. The Tenant had ample time to pay utility costs since the application has been filed and have made no effort to transfer the utility to their name or reimburse the Landlord. The Tenants were aware of the hearing based on the email from the Tenant to the Board on February 22, 2023 and clearly they choose not to attend to make submissions to preserve their tenancy. Given the Tenants payment history, I do not find a conditional order for payment can preserve this tenancy.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated.

2. The Tenants shall pay to the Landlord \$17,854.35. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application plus the utility costs. See Schedule 1 for the calculation of the amount owing.
3. The Tenants shall also pay the Landlord compensation of \$88.77 per day for the use of the unit starting February 28, 2024 until the date the Tenants move out of the unit.
4. If the Tenants do not pay the Landlord the full amount owing on or before March 16, 2024, the Tenants will start to owe interest. This will be simple interest calculated from March 17, 2024 at 7.00% annually on the balance outstanding.
5. If the unit is not vacated on or before March 16, 2024, then starting March 17, 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 17, 2024.

March 5, 2024

Date Issued

Sandra Macchione

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 17, 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 if the tenancy is terminated

Rent Owing To Hearing Date	\$23,996.79
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$9,000.00
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	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
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
Plus the amount owing to the Landlord for utilities	2,671.59
Total amount owing to the Landlord	\$17,854.35
Plus daily compensation owing for each day of occupation starting February 28, 2024	\$88.77 (per day)

2024 ONLTB 16534 (CanLIJ)