



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Aaron v Mudryk, 2023 ONLTB 80158

**Date:** 2023-12-08

**File Number:** LTB-L-059530-22

**In the matter of:** 147 GRANT  
HAMILTON ON L8N2X8

**Between:** Aaron Clarke Landlord

**And**

Rae-lyne Mudryk Tenant

Clarke Aaron (the 'Landlord') applied for an order to terminate the tenancy and evict Rae-lyne Mudryk (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. ('L1 application')

The Landlord also applied for an order to terminate the tenancy because ('L2 application'):

- The Tenant persistently paid their rent late.
- The Landlord requires vacant possession of the rental unit for the purposes of residential occupation.

This application was heard by videoconference on November 30, 2023.

The Landlord attended the hearing. The Tenant was 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.

### **Determinations:**

#### *Preliminary Issue*

1. The application is amended to reflect the proper name of the Landlord, "Aaron Clark".

*L2 Application*

2. The Landlord seeks an order terminating the tenancy because he requires vacant possession of the rental unit for his own personal use.
3. Section 48.1 of the Residential Tenancies Act 2006, (the 'Act') requires that requires that a Landlord compensate a Tenant an amount equal to one month's rent. Section 55.1 of the Act requires that the compensation be paid by no later than the termination date set out in the notice of termination. In this case that would be on or before December 1, 2022.
4. At the hearing the Landlord acknowledged that he did not compensate the Tenant by paying him equivalent to one month's rent. Accordingly, this portion of the Landlord's application is dismissed.
5. The second ground for termination, regarding the L2 application, has to do with the Tenant persistently paying their rent late.
6. An application for termination on this ground is based on an N8 notice of termination. The difficulty with this portion of the application is the Landlord has not filed a Certificate of Service (COS) swearing that the Tenant had been served with the N8 notice of termination with the termination date of December 1, 2022.
7. Rule 4.2 of the Board's Rules of Procedure states:

*Where the LTB permits an application to be e-filed, any related Notice of Termination, affidavit, or Certificate of Service must be uploaded at the time of filing using the LTB's e- filing portal.*
8. The Landlord claims to have filed the COS with the Board. I gave the Landlord the benefit of the doubt and advised that he could provide a copy of the COS via a post-hearing submission. As of the date of this order, no COS has been provided. Accordingly, I find it appropriate to dismiss this portion of the Landlord's L2 application.

*L1 Application*

9. 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.
10. As of the hearing date, the Tenant was still in possession of the rental unit.
11. The lawful rent is \$850.00. It is due on the 1st day of each month.
12. Based on the Monthly rent, the daily rent/compensation is \$27.95. This amount is calculated as follows: \$850.00 x 12, divided by 365 days.

13. The Tenant has not made any payments since the application was filed.
14. The rent arrears owing to November 30, 2023, are \$12,350.00.
15. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
16. There is no last month's rent deposit.
17. 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.

**It is ordered that:**

1. The Landlord's L2 application is dismissed.
2. The tenancy between the Landlord and the Tenant is terminated, pursuant to the L1 application, unless the Tenant voids this order.
3. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$13,386.00 if the payment is made on or before December 19, 2023. See Schedule 1 for the calculation of the amount owing.
4. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after December 19, 2023, but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
5. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before December 19, 2023**
6. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$12,536.00. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
7. The Tenant shall also pay the Landlord compensation of \$27.95 per day for the use of the unit starting December 1, 2023, until the date the Tenant moves out of the unit.
8. If the Tenant does not pay the Landlord the full amount owing on or before December 19, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 20, 2023, at 7.00% annually on the balance outstanding.
9. If the unit is not vacated on or before December 19, 2023, then starting December 20, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

10. 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 December 20, 2023.

**December 8, 2023**

**Date Issued**

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Bryan Delorenzi

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 June 20, 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 to void the eviction order and continue the tenancy if the payment is made on or before December 19, 2023**

Rent Owing To December 31, 2023	\$13,200.00
Application Filing Fee	\$186.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$13,386.00</b>

**B. Amount the Tenant must pay if the tenancy is terminated**

Rent Owing To Hearing Date	\$12,350.00
Application Filing Fee	\$186.00
<b>Total amount owing to the Landlord</b>	<b>\$12,536.00</b>
Plus daily compensation owing for each day of occupation starting December 1, 2023	\$27.95 (per day)