



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

**Citation:** Dastous v Ehioghiren, 2023 ONLTB 77234

**Date:** 2023-12-06

**File Number:** LTB-L-061106-22

**In the matter of:** 1, 736 CANNON ST E  
HAMILTON ON L8L2G9

**Between:** Greg Dastous Landlord

**And**

Uyi Eddie Ehioghiren Tenant

### **L1 Application – Non-Payment of Rent**

Greg Dastous (the 'Landlord') applied for an order to terminate the tenancy and evict Uyi Eddie Ehioghiren (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

### **L2 Application – Persistent Late Payment of Rent**

The Landlord applied for an order to terminate the tenancy and evict the Tenant because the Tenant has been persistently late in paying the Tenant's rent. The Landlord also claimed compensation for each day the Tenant remained in the rental unit after the termination date.

These two applications were heard by videoconference on November 15, 2023. The Landlord's representative, Victoria Orlandi, and the Tenant attended the hearing.

### **Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before December 17, 2023.

## L2 Application – Persistent Late Payment of Rent

2. On October 3, 2022, the Landlord served the Tenant an N8 notice of termination (N8) with a date of termination of December 31, 2022. The notice of termination alleges that the Tenant paid the rent late 8 times over the 12-month period from October 2021 to September 2022. I am satisfied that this N8 was properly served and complies with s. 58(2) of the Act.
3. The Landlord filed an L2 application with the Board on October 20, 2022. I am satisfied that this application complies with s. 69(1) of the Act. The Tenant was in possession of the rental unit on the day of filing, and remains in possession of the rental unit as of the day of this hearing.
4. Daily compensation, the rent deposit, and the Landlord's costs will be considered as part of the Landlord's L1 application.
5. The rent is due on the first day of each month.
6. The Landlord's representative submitted that the Tenant paid the rent late for 8 months over the 12-month period of October 2021 to September 2022, and specifically, that the rent was paid late every month over the period of February 2022 to September 2022. The Landlord submitted a detailed ledger providing specific payment information and payment dates over this period.
7. The Tenant testified that he paid the rent late for 8 months over the 12-month period of October 2021 to September 2022, and specifically, that the rent was paid late every month over the period of February 2022 to September 2022.
8. On the basis of the evidence provided, I find that the Tenant has persistently failed to pay the rent on the date it was due. The rent was paid late 8 times in the 12-month period from October 2021 to September 2022.
9. After the notice was served, over the 14-month period from October 2022 to November 2023, the Landlord's representative submitted that the Tenant paid the rent late every month over the previous 14 months.
10. The Tenant testified that he paid the rent late every month over the 14-month period from October 2022 to November 2023.
11. On the basis of the evidence provided, I find that the Tenant paid the rent late every month over the 14-month period from October 2022 to November 2023.
12. The Landlord's representative stated that the Landlord sent letters to the Tenant on October 21, 2022, and on November 2, 2023 offering a payment plan to the Tenant in an effort to receive consistent on-time rent payments, as well as gradual payment of the rent arrears. The representative stated further that the Tenant countered the Landlord's offer with a payment plan that would have required 39 months for the Tenant to repay the arrears. The representative noted that this payment plan was unacceptable for the Landlord.

13. The Landlord's representative submitted further that the late rent payments increase the financial burden on the Landlord, and make it more difficult for the Landlord to meet financial obligations associated with the tenancy.
14. The Tenant testified that he encountered financial difficulties starting in January 2022 when he lost his job and all his employment income. The Tenant testified further that since January 2022 he held several short-term jobs, but his lack of steady employment income continued to result in financial difficulties, and he was therefore unable to pay his rent ontime.
15. The Tenant testified that he will be employed again in November 2023, but he is not keen to retain his tenancy because of the financial difficulties he encounters in paying the rent. He asserted that he could not afford another unit. The Tenant remarked that he is planning to move in with his friend to save some money, and that without the assistance of his friend, he would be forced to live in a homeless shelter.

#### Relief from Eviction

16. 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.
17. Over the 26-month period from October 2021 to November 2023 the Tenant paid the monthly rent late on 22 occasions. I am satisfied that if the rent is not paid on time the Landlord encounters financial difficulties in meeting his own financial obligations. I am also satisfied that, given the long and consistent record of late rent payments and the Tenant's on-going financial constraints to make on-time rent payments, providing the Tenant with relief from eviction on the condition of on-time rent payments would be prejudicial to the Landlord. I am not satisfied that the tenancy is, or will be in the immediate future, financially viable for the Tenant. Furthermore, the Tenant is not motivated to retain the tenancy and the financial obligations associated with it, and seeks to reside with his friend to save some money. For these reasons, it would be unfair to the Landlord to grant the Tenant with any eviction relief.
18. As a result, the requested eviction order shall be issued based on the Landlord's L2 application for persistent late payment of rent.

#### **L1 Application – Non-Payment of Rent**

19. As an eviction order is being issued based on the Landlord's L2 application, it is not necessary to consider the request for eviction in the Landlord's L1 application. The Tenant will be ordered to pay the rent arrears owing less the last month's rent deposit and interest owing on the deposit pursuant to s. 86, s. 87(1)(a) and s. 106 of the Act.
20. As of the hearing date, the Tenant was still in possession of the rental unit.

21. The lawful rent is \$1,400.00. It is due on the 1st day of each month.
22. Based on the monthly rent, the daily rent/compensation is \$46.03. This amount is calculated as follows: \$1,400.00 x 12, divided by 365 days.
23. The Tenant has paid \$9,600.00 to the Landlord since the application was filed.
24. The rent arrears owing to November 30, 2023 are \$11,100.00.
25. The Landlord incurred costs of \$186.00 for filing the L1 and L2 applications and is entitled to reimbursement of those costs.
26. The Landlord collected a rent deposit of \$1,400.00 from the Tenant 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.
27. Interest on the rent deposit, in the amount of \$47.39 is owing to the Tenant for the period from January 1, 2022 to November 15, 2023.
28. This order contains all of the reasons for the decision within it and no further reasons shall be issued.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before December 17, 2023.
2. The Tenant shall pay to the Landlord \$9,129.06. 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 Tenant. See Schedule 1 for the calculation of the amount owing.
3. The Tenant shall also pay the Landlord compensation of \$46.03 per day for the use of the unit starting November 16, 2023 until the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlord the full amount owing on or before December 17, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 18, 2023 at 7.00% annually on the balance outstanding.
5. If the unit is not vacated on or before December 17, 2023, then starting January 3, 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 January 3, 2024.

**December 6, 2023**

\_\_\_\_\_ **Date Issued**

Frank Ebner

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 July 3, 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 as the tenancy is terminated.**

Rent Owing To Hearing Date	\$19,990.45
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$9,600.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,400.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$47.39
<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$9,129.06</b>
Plus daily compensation owing for each day of occupation starting November 16, 2023	\$46.03 (per day)

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