



Order under Section 69 Residential Tenancies Act, 2006

Citation: Wong v Hewey, 2023 ONLTB 77888

Date: 2023-12-05

File Number: LTB-L-079444-22

In the matter of: 6, 448 D'ARCY ST
COBOURG ON K9A4A8

Between: Peng Wong Landlord

And

Kayla Hewey Tenants Tyler McBride

Peng Wong (the 'Landlord') applied for an order to terminate the tenancy and evict Kayla Hewey and Tyler McBride (the 'Tenants') because

- the Tenants did not pay the rent that the Tenants owe (L1 application);
- the Tenants have been persistently late in paying the Tenants' rent (L2 application).

This application was heard by videoconference on November 20, 2023.

Only the Landlord attended the hearing.

As of 1:42 p.m., 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.

Determinations:

L1 Application – Non-Payment of Rent

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 \$1,650.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$54.25. This amount is calculated as follows: \$1,650.00 x 12, divided by 365 days.
5. The Tenants have paid \$5,197.00 to the Landlord since the application was filed.
6. The rent arrears owing to November 30, 2023 are \$13,115.00.
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 \$1,650.00 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 \$66.02 is owing to the Tenants for the period from October 8, 2021 to November 20, 2023. L2 Application – Persistent Late Payment of Rent
10. The Tenants have persistently failed to pay the rent on the date it was due. The rent is due on the 1st day of each month. The rent has been paid late 10 times in the past 13 months.
11. The Tenants have made most of the rent payments in the installments over the course of the month rather than a one-single payment. The N8 notice covers the period from December 2021 till December 2022 and there was only three instances the rent was fully paid in time. The pattern has continued since the N8 was served. The Tenants either paid late or paid partially till June 2023. Since July 2023 the Tenants have not paid rent at all.
12. I find that the Tenants have persistently failed to pay the rent by 1st day of each month as required by the lease agreement over the last two years. I find that the Landlord has proved that the Tenants have paid their rent late persistently.

Section 83 considerations

13. 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.
14. The Landlord testified that she gave the Tenants a warning in August 2022 that if they continue to pay rent late, she will file an application with the Board. The Tenants continued to pay rent late.

15. The Landlord also testified that she has attempted to reach out to the Tenants via calls, texts, emails but there has been no response from their side. The Tenants were not present to present their side of circumstances. I find that Landlord has proven the merits of her applications.
16. As the Landlord has proven the allegations in the L2 application, a non-voidable eviction order shall be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated on December 16, 2023.
2. The Tenants shall pay to the Landlord \$11,019.98. 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.
3. The Tenants shall also pay the Landlord compensation of \$54.25 per day for the use of the unit starting November 21, 2023 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 December 16, 2023, the Tenants will start to owe interest. This will be simple interest calculated from December 17, 2023 at 7.00% annually on the balance outstanding.
5. If the unit is not vacated on or before December 16, 2023, then starting December 17, 2023, 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 December 17, 2023.

December 5, 2023

Date Issued

Sheena Brar

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 June 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 Tenants must pay since the tenancy is terminated

Rent Owing To Hearing Date	\$17,747.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$5,197.00
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	- \$1,650.00
Less the amount of the interest on the last month's rent deposit	- \$66.02
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	\$11,019.98
Plus daily compensation owing for each day of occupation starting November 21, 2023	\$54.25 (per day)