



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

**Citation:** Williams & McDaniel Property Management v Hergott, 2023 ONLTB 76732

**Date:** 2023-11-29

**File Number:** LTB-L-031366-23

**In the matter of:** 303, 14 LEACREST CRT  
KITCHENER ON N2E1H8

**Between:** Williams & McDaniel Property Management Landlord

**And**

Peter Hergott Tenant

Williams & McDaniel Property Management (the 'Landlord') applied for an order to terminate the tenancy and evict Peter Hergott (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 unit after the termination date.

This application was heard by videoconference on November 14, 2023.

Only the Landlord's Representative Tim Kelly attended the hearing.

As of 11:46 am, 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:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, termination of the tenancy is granted.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On March 9, 2023, the Landlord gave the Tenant an N8 notice of termination. The notice of termination contains the following allegations: the Tenant has persistently paid their rent late.
4. Based on the Landlord's unopposed evidence, I find that the Tenant has persistently fail to pay the rent on the date it was due. The rent is due on the 1<sup>st</sup> day of each month. According to the N8 Notice and the attached ledger the rent was paid late 4 times in the 9 months before the N8 Notice was served. Following the service of the N8 Notice, the Tenant continued to pay the rent late.

5. The Landlord's Representative submitted a copy of a payment plan proposal letter which had been provided to the Tenant.
6. The Landlord's Representative submitted that the Tenant owes arrears and the Landlord has filed an L1 application which is scheduled to be heard by the Board separately.
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 Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$55.48 is owing to the Tenant for the period from November 24, 2020 to November 14, 2023 .
9. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.
10. 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 tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before December 10, 2023.
2. If the unit is not vacated on or before December 10, 2023, then starting December 11, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. 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 11, 2023.
4. With respect to the Landlord's request for daily compensation, the Landlord's Representative submitted that they have filed a separate L1 application about rent owing and they are awaiting the hearing. I find that the issue of rent/compensation is best addressed as part of those proceedings and so I make no determinations in that regard.
5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. The Landlord owes \$1,580.48 which is the amount of the rent deposit and interest on the rent deposit.
7. If the Tenant does not pay the Landlord the full amount owing on or before December 10, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 11, 2023, at 7.00% annually on the balance outstanding.

**November 29, 2023**  
**Date Issued**

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Brenda Mercer  
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 of the Tenant expires on June 11, 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.

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