



Order under Section 69 Residential Tenancies Act, 2006

Citation: Liuna Hamilton Association c/o DMS Property Management Ltd. v Harding, 2023
ONLTB 76805

Date: 2023-11-24

File Number: LTB-L-079210-22

In the matter of: 5, 1169 UPPER WELLINGTON ST
HAMILTON ON L9A5A6

Between: Liuna Hamilton Association c/o DMS Property Management Ltd. Landlord

And

Diane Harding, David Brooks and Matthew May Tenant

Liuna Hamilton Association c/o DMS Property Management Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Diane Harding, David Brooks and Matthew May (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 6, 2023. Only the Landlord's legal representative, F. Calcagny, attended the hearing. As of 9:17 a.m., 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. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,157.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$38.04. This amount is calculated as follows: \$1,157.00 x 12, divided by 365 days.
5. The Tenant has paid \$13,658.00 since the application was filed.
6. The rent arrears owing to November 30, 2023 are \$198.00.
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 \$1,054.00 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 if the tenancy is terminated.
9. Interest on the rent deposit, in the amount of \$118.61 is owing to the Tenant for the period from October 1, 2016 to November 6, 2023.
10. 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 Tenant and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
11. The Landlord submitted that the parties entered a repayment plan on consent. I am satisfied that it would not be unfair to grant relief from eviction subject to this repayment plan.

It is ordered that:

1. The Tenant shall pay to the Landlord \$384.00, which represents the arrears of rent and the application filing fee outstanding for the period ending November 30, 2023.
2. The Landlord's application for eviction of the Tenant is denied on the condition that:
 - (a) The Tenant shall make the following payments to the Landlord in respect of the monies owing under paragraph 1 of this order:

Date Payment Due	Amount of Payment
November 18, 2023	\$128.00 (costs and arrears)
December 18, 2023	\$128.00 (arrears)
January 18, 2024	\$128.00 (arrears)

- (b) Commencing December 1, 2023, the Tenant shall also pay the Landlord the lawful rent in full, on or before the first day of each corresponding month for which the Tenant is in the arrears described in paragraph 1.
3. If the Tenant fails to make any of the payments in accordance with paragraph 2, and by the dates required, then:
 - (a) The Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant, and for the payment of any new arrears of rent and NSF charges not already ordered under paragraph 1 of this order. The Landlord must make the application within 30 days of a breach of a condition set out in paragraph 2 of this order.

(b) The balance owing under paragraph 1 of this order shall become payable on the day following the date of default. The monies owing shall bear interest at the post-judgment interest rate determined under subsection 207(7) of the Act.

November 24, 2023
Date Issued

Camille Tancioco
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.