



**Order under Section 78(6)
Residential Tenancies Act, 2006**

Citation: John Apartment Joint Venture o/a Valery Properties v Finochio, 2023 ONLTB 77149

Date: 2023-11-23

File Number: LTB-L-074167-23

In the matter of: 1005, 181 JOHN ST N
HAMILTON ON L8L7Z7

Between: John Apartment Joint Venture o/a Valery Properties Landlord

And

Marilyn Rose Finochio Tenant

John Apartment Joint Venture o/a Valery Properties (the 'Landlord') applied for an order to terminate the tenancy and evict Marilyn rose Finochio (the 'Tenant') and for an order to have the Tenant pay the rent they owe because the Tenant failed to meet a condition specified in the order issued by the Board on September 8, 2023 with respect to application LTB-L-011259-23.

The L4 application was sent to a hearing which was held by videoconference on November 15, 2023 to consider this application.

The Landlord's agent Tina Novak and the Tenant attended the hearing.

The Tenant did not speak with Tenant Duty Counsel as TDC was not present in the hearing.

When the matter was called at 3:32 pm, the Tenant was not present at the hearing. I confirmed the Tenant was not in a breakout room, nor the waiting room. There was no indication in the Tribunal Ontario Portal that the Tenant was no longer able to participate nor did I receive any urgent message from the Hearing Support Team. Accordingly, the matter proceeded as uncontested.

Determinations:

1. The order provides that the Landlord can apply to the LTB under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenant to terminate the tenancy and evict the Tenant if the Tenant does not meet certain conditions in the order.
2. The Landlord filed the L4 application on September 20, 2023 and unable to *resolve ex parte* due to confusion with the application. The matter was directed to hearing to determine the amount owing as it was unclear in the Landlord's application.
3. The Landlord claims an administrative error and request the L4 application be amended to include arrears for September 2023. The Board consented to this request. The Breach
4. It was the uncontested evidence of the Landlord that the Tenant breach the previous Board order issued September 8, 2023 by failing to pay the lawful monthly rent on time and in full for September 15, 2023.
5. The application was filed within 30 days of the breach. Arrears Owing
6. The previous application includes a request for an order for the payment of arrears of rent and the order requires the Tenant to make payments by specific due dates. Accordingly, in addition to eviction, the Landlord is entitled to request an order for the payment of arrears owing.
7. The Landlord said the Tenant has not made any payment since the filing of the L4 application.
8. The Tenant was ordered to pay \$6,952.00 for rent arrears and the application filing fee in the previous order. The amount that is still owing from that order is \$6,952.00 and that amount is included in this order. This order replaces order LTB-L-011259-23.
9. Since the date of the previous order, the Tenant has failed to pay the full rent that became owing for the period from September 15, 2023 to November 15, 2023.

The Rent Deposit

10. The Landlord collected a rent deposit of \$1,379.54 from the Tenant and this deposit is still being held by the Landlord.
11. Interest on the rent deposit is owing to the Tenant for the period from October 1, 2021 to November 15, 2023.
12. The amount of the rent deposit and interest on the rent deposit are applied to the amount the Tenant is required to pay.

Daily Compensation

13. The Landlord is entitled to daily compensation from starting November 16, 2023 until the date the Tenant moves out of the unit at a daily rate of \$47.05. This amount is calculated as follows: \$1,431.15 x 12 months, divided by 365 days.

Relief from Eviction

14. 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.
15. The Landlord said there has been a lengthy history of non-payment of rent with the tenancy. The Tenant goes for extended periods of time and then pays lump sum payments. The Landlord said the tenancy began around August 2019 and believes there may be two minor children residing at the rental unit. The Landlord also believes the Tenant may receive Government subsidy by way of Ontario Works. I considered all the above in consideration for relief.
16. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The Landlord's L4 application is granted.
2. Order LTB-L-011259-23 is cancelled.
3. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before December 4, 2023.
4. If the unit is not vacated on or before December 4, 2023, then starting December 5, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
5. 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 5, 2023.
6. The Tenant shall pay to the Landlord \$8,918.77*. This amount represents the rent owing up to November 15, 2023 and the cost of filing the previous application, less the rent deposit and interest the Landlord owes on the rent deposit.
7. The Tenant shall also pay to the Landlord \$47.05 per day for compensation for the use of the unit starting November 16, 2023 to 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 4, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 5, 2023 at 7.00% annually on the balance outstanding.

November 23, 2023

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Dana Wren

Member, Landlord and Tenant Board

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 5, 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.

* Refer to the Summary of Calculations Table.

SUMMARY OF CALCULATIONS TABLE

Amount the Tenant must pay the Landlord:

Reason for amount owing	Period	Amount
Total arrears owing	Up to November 15, 2023	\$10,353.70
Less the rent deposit:		-\$1,379.54
Less the interest owing on the rent deposit	October 1, 2021 to November 15, 2023	-\$55.39
Plus daily compensation owing for each day of occupation starting November 16, 2023		\$47.05 (per day)

Total the Tenant must pay the Landlord:	\$8,918.77+ \$47.05 per day starting November 16, 2023
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