



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

**Citation:** Falcon Lake Investments of Canada Inc. v Dickson, 2023 ONLTB 75091

**Date:** 2023-11-20

**File Number:** LTB-L-031162-23

**In the matter of:** 10, 10.5 DUFFERIN ST  
NORWICH ON N0J1P0

**Between:** Falcon Lake Investments of Canada Inc. Landlord

**And**

Melanie Dickson Tenant

Falcon Lake Investments of Canada Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Melanie Dickson (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 23, 2023.

The Landlord's legal representative, Ibifiri Fabian, and the Landlord's agent, Lily Toshev,(LT) attended the hearing.

The Tenant also attended the hearing.

### **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 \$1,537.17. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$50.54. This amount is calculated as follows: \$1,537.17 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to October 31, 2023 are \$18,296.08.
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 \$1,511.25 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 \$30.64 is owing to the Tenant for the period from January 1, 2023 to October 23, 2023.

#### Landlord Evidence

10. The position of the Landlord is The Tenant has made no rent payment since October 2022. The Landlord's legal representative submitted she had texted the Tenant in December 2022 advising the Tenant there was rent arrears owing with no response from the Tenant at that time.
11. The Landlord claims the Tenant was paying her rent by etransfer prior to going into arrears. The Landlord submitted into evidence copies of three etransfer confirmation receipts from the Tenant to the Landlord for the months of March 2022, June 2022 and September 2022.
12. The transfers show the email originating from the Tenant's email to the Landlord agent's email and sending money via etransfer through the TD bank for the Landlord to accept.
13. Due to the Tenant's lack of response to the Landlord's legal representative's text, and serving the N4 notice and given that no payments have been made since the Landlord filed the application, the Landlord is seeking a standard order for eviction and arrears.

#### Tenant Evidence

14. The position of the Tenant is that she disputes the arrears and claims that her rent has been paid on time and in full up to the day of the hearing.
15. The Tenant testified she has an accountant that manages all her financial matters and pays her rent for her, and has been doing so since before the Landlord served the N4 notice.
16. To support her claim the Tenant submitted into evidence copies of etransfer payments from the Tenant to the Landlord for the months of arrears in question. The copies show payments from the TD bank in the Tenant's name to the Landlord's agent, TK's personal email address. The Tenant testified that her accountant had put the evidence package together for her to submit as evidence of payment.

Analysis and Findings

17. On a balance of probabilities means the applicant, in this case the Landlord must show that their version of events is the more probable and should succeed. Saying something is proven on a balance of probabilities simply means that it is more likely than not to have occurred. It means that it is probable, i.e., the probability that some event happened is more than 50%--indeed, 50.1% is sufficient. In all cases, the decision maker must weigh up the evidence and decide which version is most probably true. Consequently, the real truth may never be known. All that can be done is to decide which of the parties has presented the most probable version.
18. The Tenant disputed the arrears and stated she believed she was not in arrears as her accountant paid her rent for her and had been doing so since before the Landlord served the Tenant the N4 notice.
19. The Tenant testified that her accountant took care of all her financial matters and paid her rent on her behalf directly to the Landlord by e-transfer. The Tenant's relies solely on the copies of the TD bank e-transfer payments to support her claim. The Tenant testified the evidence copies of the e-transfers were created by the Tenant's accountant. The Tenant failed to produce the accountant as a witness for the Tenant to testify to the evidence.
20. I find the Tenant's evidence submission problematic because the author of the document, the Tenant's accountant did not attend the hearing to testify to the validity of the document. In the absence of any testimony from the accountant to speak to the e-transfer rent payments made on behalf of the Tenant, I must treat the document as hearsay, and therefore I give this evidence very little weight.
21. In my view there are discrepancies in the Tenant's testimony that her accountant paid the Landlord by e-transfer through the TD bank. The copies of the e-transfers submitted by the Tenant show the email payments came from the Tenant's personal email, and not an email address of her accountant.
22. I also note that if the Tenant truly believed she was not in arrears, and in fact her accountant had been paying her rent, I find it reasonable that the Tenant would have contacted the Landlord after being served the N4 notice in an attempt to resolve the matter of rent arrears.
23. Further, in my view, the Tenant had a responsibility to at least contact the accountant and inquire as to whether her rent had been paid on her behalf. The Tenant did not contact the Landlord or her accountant and instead the Tenant waited approximately 10 months before contacting her accountant who provided copies of the e-transfer payments which the Tenant submitted two days before the hearing.
24. The Landlord's legal representative submitted she texted the Tenant in December 2022 to inform her of the arrears. The Tenant testified she did not remember getting a text from the Landlord's legal representative in December 2022 regarding the arrears. The Tenant testified she was the victim of a break and enter, and her husband succumbed to injuries during this incident, which left the Tenant with PTSD and she testified her memory was affected by this incident from approximately December 2022 to March 2023.

25. Even if I accept the Tenant's testimony regarding her affected memory, the Tenant was served the N4 notice by the Landlord on March 21, 2023 and this alone should have alerted the Tenant to the Landlord's claims for arrears and at the least the Tenant should have inquired with her accountant about the Landlord's claims. I find the Tenants' lack of particulars and specific details in her testimony about the rent payments made by her accountant are such that I do not find the Tenant credible in her testimony.
26. I prefer the evidence submitted by the Landlord with respect to the etransfers that the Tenant had paid the Landlord for rent prior to falling into arrears. The three etransfers submitted by the Landlord are generated from the Tenant's email address to the Landlord with included messages from the Tenant regarding the etransfer and to which months the money was to be applied.
27. In addition to the Landlord's etransfer evidence, I am satisfied the Landlord's legal representative had also texted the Tenant in December 2022 to notify the Tenant of the arrears, which should have led the Tenant to contact the Landlord, the Landlord's legal representative or the Tenant's accountant, if she truly believed the rent was paid.
28. Further, even if the Tenant did not receive the text from the Landlord's legal representative in December 2022, or remember getting it, I find it reasonable for the Tenant to have been made aware of the arrears the Landlord was claiming in the N4 notice, and I find it reasonable the Tenant would have further indication of the arrears after receiving the application from the Board along with the notice of hearing. Even after all the above, in my view, it is not reasonable to accept the Tenant was unaware of the Landlord's claims for non payment of rent and it is not unreasonable to expect the Tenant to have contacted her accountant at some point between the N4 notice and the application being mailed out by the Board. Instead the Tenant chose to submit etransfer copies, created by the accountant, two days before the hearing.
29. Given all the above, with the evidence before me and on a balance of probabilities I find the Landlord has met the burden to support her claim of the arrears the Tenant owes in the Landlord's application.

### Section 83: Delay Eviction

30. The Tenant submitted that she intends to move out of the rental unit. The Tenant testified she suffered PTSD after the Tenant's rental unit was broken into, and her husband succumbed to injuries as a result of the incident. The Tenant testified she can no longer stay in the rental unit and requested an extended eviction date of April 1, 2024.
31. The Tenant did not submit any evidence to the Board to support her claim of her medical condition of PTSD.
32. The Landlord rejected the Tenant's offer and requested a standard order for eviction and arrears.
33. The Tenant has no children, and no persons with special needs or requirements living in the rental unit with her. Given the quantum of the arrears, and the fact the Tenant has made no payment since the Landlord filed the application, I am granting the Landlord the

request for an eviction however I find a delay of eviction to be reasonable to allow the Tenant time to sort out the arrears with her accountant or find more suitable housing. In the absence of any evidence of the Tenant's medical condition, and taking into consideration the prejudice to the Landlord on a long delay of eviction I find the Tenant's request for April 1, 2024 is not reasonable.

34. 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 not be unfair to postpone the eviction until December 15, 2023 pursuant to subsection 83(1)(b) of the Act.
35. At the time of writing this order it was discovered the Tenant submitted post hearing submissions, uploaded to the TOP portal. I note that I did not consider the Tenant's post hearing submissions in making my final decision, given that the Landlord did not have an opportunity to respond.
36. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
37. This order contains all reasons for the determinations and order made. No further reasons will be issued.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:
  - \$20,019.25 if the payment is made on or before November 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

  - \$21,556.42 if the payment is made on or before December 15, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after December 15, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before December 15, 2023
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$16,565.44. 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.

6. The Tenant shall also pay the Landlord compensation of \$50.54 per day for the use of the unit starting October 24, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before December 1, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 2, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 15, 2023, then starting December 16, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 16, 2023.

2023 ONLTB 75091 (CanLII)

**November 20, 2023**  
**Date Issued**

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Greg Brocanier  
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 June 16, 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 to void the eviction order and continue the tenancy if the payment is made on or before November 30, 2023**

Rent Owing To November 30, 2023	\$19,833.25
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	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<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 the Tenant must pay to continue the tenancy</b>	<b>\$20,019.25</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 15, 2023**

Rent Owing To December 31, 2023	\$21,370.42
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	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<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 the Tenant must pay to continue the tenancy</b>	<b>\$21,556.42</b>

**C. Amount the Tenant must pay if the tenancy is terminated**

Rent Owing To Hearing Date	\$17,921.33
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	- \$0.00
<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	- \$1,511.25
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$30.64
<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>\$16,565.44</b>
Plus daily compensation owing for each day of occupation starting October 24, 2023	\$50.54 (per day)