



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

Citation: Hamelin v Hiller, 2023 ONLTB 71303

Date: 2023-11-10

File Number: LTB-L-051080-22

In the matter of: 298 LAKE AVE E
CARLETON PLACE ON K7C1J5

Between: Randal Stuart Hamelin Landlords
Jessica Anita Hamelin

And

Robb Hiller Tenants
Kelly Hiller

Randal Stuart Hamelin and Jessica Anita Hamelin (the 'Landlords') applied for an order to terminate the tenancy and evict Robb Hiller and Kelly Hiller (the 'Tenants') because the Tenants have been persistently late in paying the Tenants' rent.

This application was heard by videoconference on October 18, 2023.

The Landlord Randal Stuart Hamelin attended the hearing. The Tenant Kelly Hiller and the Tenants' Legal Representative Linda Tranter also attended the hearing.

Preliminary Issue:

1. A preliminary issue was raised by the Tenant's Legal Representative regarding the details in the N8 Notice of Termination. Counsel for the Tenants stated that the periods up until January of 2022 had already been the subject of a previous N8 application brought before the Board under file number EAL-97782-21. On this basis the Tenants' Legal Representative sought to have the application dismissed on the basis that the N8 was confusing and that portions of it were subject to the doctrine of *res judicata* and could not be re-litigated. The prior N8 Notice covered the period of April 20, 2018 to July 20, 2021. The prior application had a hearing date of January 12, 2022 and counsel for the Tenants indicated that the periods up to January of 2022 had been discussed in the prior hearing. Since the prior order had an issuance date of January 18, 2022 I felt it appropriate to limit the analysis of the current N8 notice to activity which may have occurred after its date, from between January 2022 to August 2022. The parties agreed that this period of the N8 would be assessed under this present application number.

Determinations:

2. As explained below, the Landlords have not proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the application is dismissed.
3. The Tenants were in possession of the rental unit on the date the application was filed.
4. The Tenants were in possession of the rental unit as of the hearing date.

N8 Notice of Termination:

5. On August 31, 2022, the Landlords gave the Tenants an N8 notice of termination deemed served the same day. The notice of termination contains the following allegations:

That rent was not paid on the date it became due and payable on 28 occasions between September of 2013 to the end of 2020, and it specifically noted 15 occasions of late payments between January 2021 to August 2022. As mentioned above, the parties agreed to limit a discussion of whether late payments were made between January 2022 to August 2022.

Persistent Late Payment:

6. The parties appeared to fundamentally disagree about the record keeping practices of the Landlords. Specifically for the months of January 2022 to August of 2022 it was the Tenant Ms. Hiller's opinion that she had always prepaid rent for the upcoming month on or about the 20th of every month. It was the Landlord Mr. Hamelin's opinion that rent had always been in fact paid late by approximately 20 days for each of these months in discussion.
7. In support of his position, in addition to the ledger attached to the N8, the Landlord Mr. Hamelin entered a handwritten ledger of payments into evidence which spans the period of November 2019 to May of 2023. There was a disagreement between the parties about whether the evidence that had been considered in the previous hearing could be considered by me in this hearing to demonstrate a pattern of late payments. In my view, given the previous order determined there was no late payment for the period of time covered by that application, I can only consider the evidence going forward. However, I must assess any payments which were made by the Tenants that might affect the balance owing for January of 2022 and any degree of lateness.
8. Upon reviewing the Landlords' ledger, it appears that there are internal inconsistencies with the Landlords' calculations leading up to January 2022 where the Tenants have prepaid rent that is not reflected in the following month in reducing the balance owing by the Tenants. For example, there appears to be an error in the Landlords' calculations for the month of November 2021. The Landlords last column in the handwritten ledger shows a declining balance each time rent is paid, with the rent for November 2021 being \$1,292.86. However, for the month of November 2021 the Landlords in fact collected a total of \$1,296.52. In the months following November 2021 this small prepayment is not reflected in the ledger. Given this, the Landlords' records for the period under assessment of January 2022 to August 2022 inaccurately reflect what was due and owing. What this means is that it is impossible from the evidence before me to make a determination about

whether rent was paid late as it is equally plausible that the rent was paid in advance and not properly reflected in the ledger.

9. Given that the record keeping practices of the Landlords are inaccurate, I find that the evidence presented does not meet the burden required to meet the standard of proof in this case.

It is ordered that:

1. The Landlords' application is dismissed.

November 10, 2023
Date Issued

Madeline Ntoukas
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.