



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

Citation: Taafe v Ripley, 2023 ONLTB 71262

Date: 2023-11-07

File Number: LTB-L-024026-23

In the matter of: Basement, 201 CELINA ST OSHAWA
ON L1H4N7

Between: Kim Taafe Landlord

And

Catharine Ripley Tenant

Kim Taafe (the 'Landlord') applied for an order to terminate the tenancy and evict Catharine Ripley (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 October 17, 2023.

The Landlord, the Landlord's Representative, Carrie Aylwin, and the Tenant attended the hearing.

Preliminary Issues:

1. The Tenant requested an adjournment for the purpose of permitting the hearing of this application to be combined with the hearing of the Tenant's T2 and T6 applications which she filed in May 2023, related to ongoing maintenance issues. The Tenant first sent a request to reschedule the hearing to the Landlord on October 12, 2023, and the same day the Tenant filed a request to reschedule with the Board with a request to have the parties' applications heard together.
2. The Tenant submitted that the maintenance issues needed to be considered together with this application, because the maintenance issues explain why the Tenant has paid her rent late.

3. The Board already denied the Tenant's request to reschedule and combine the applications because it is expected that there will be little overlap of evidence, and little risk of inconsistent decisions. I agree that there is no need to combine the applications. Accordingly, I refused the adjournment.

Determinations:

4. For the reasons set out below, I have determined that the Tenant has been persistently late in her payment of rent, and that the tenancy should be terminated. I have postponed the date of eviction until January 2, 2024.
5. The Tenant was in possession of the rental unit on the date the application was filed. She lives in the rental unit with her children; a 14 year old and a 17 year old on a full-time basis, and an 11 year old on a part-time basis.
6. On February 4, 2023, the Landlord gave the Tenant an N8 notice of termination. The notice of termination alleges persistent late payment of rent.
7. The Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the first day of each month. The rent has been paid late 20 times in the past 21 months.
8. Moreover, the Landlord has served the Tenant with several N4 notices, but all of those were voided when the Tenant paid the underlying arrears.
9. The Tenant testified that she has struggled to pay her rent on time. She testified that her major source of income is her work as an Instacart shopper, but that she has been prevented from doing work because she is so busy doing maintenance to the rental unit; the very maintenance work that she says is the subject of her tenant applications.
10. The Landlord testified that there are no maintenance issues, and that all of the Tenant's complaints are either fabricated, or are the product of the Tenant tampering with the rental unit in order to simulate problems with repairs. He further testified that all of these issues arose only after he commenced this application.
11. I need not resolve whether the maintenance issues are genuine or not, and if so, who caused them. Those issues will be resolved in the Tenant's applications. The fact that there are maintenance issues is not a justification for failing to pay rent on time.
12. The only issue I need to resolve is whether the Tenant's work to cure the maintenance issues are the reason why she was not able to pay her rent on time; and in particular, that it was reasonable for her to stop working at her paying job so that she could instead do the maintenance work herself.
13. I find that the Tenant has not proven that the maintenance issues prevented her from working for Instacart. On the contrary, I find that she has not proven that she actually did any maintenance work at all. Other than the Tenant's general claim that she spent time doing her own repairs, she did not testify about any specific repairs that she did. Despite

uploading dozens of documents to TOP, she did not point to a single one that purported to show any repair which she did. On the contrary, the text exchanges appear to all be about the Tenant's demands that work be done by the Landlord, and disputes over the attendance in the unit by repair persons on behalf of the Landlord.

14. It is possible that the Tenant's concerns about the maintenance issues weighed on her, and distracted her from work. However, that too is not a proper excuse to pay rent on time.
15. The Landlord claimed that as of the date of the application, the Tenant was in arrears of rent in the amount of \$4,062.50. The Tenant conceded that she was in arrears, but that the amount was only \$2,206.24. Neither of them presented any evidence of how those amounts were arrived at. In the face of that competing evidence, I accept the evidence of the Tenant. The Landlord bears the burden of proving any additional amounts owing, and he has not met that burden.
16. The termination date in the Landlord's N8 notice was April 30, 2023. Since then, \$7,995.00 in rent has come due. In order for the Tenant to be in arrears in the amount of \$2,206.24, paid \$5,788.76 to the Landlord since May 1, 2023
17. Because I have terminated the tenancy, the Tenant was required to pay the Landlord \$7,447.40 in daily compensation for use and occupation of the rental unit for the period from May 1, 2023 to October 17, 2023.
18. Based on the Monthly rent, the daily compensation is \$43.81. This amount is calculated as follows: \$1,332.50 x 12, divided by 365 days.
19. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
20. The Landlord collected a rent deposit of \$1,300.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$71.25 is owing to the Tenant for the period from January 31, 2021 to October 17, 2023.
21. 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.
22. Because I do not accept the Tenant's explanation for her persistent late payment of rent, I am left with no proper explanation. On the evidence, the Tenant either cannot or will not pay her rent on time. The Landlord rents only this residential complex and supports himself separately with a full-time job. He relies on the rent from this unit to help pay the mortgage on the complex.
23. If she has to leave, the Tenant asks for a long a time as possible before eviction, and requested a 90 day delay so that she would be able to make alternate school arrangements for her children. The Landlord testified that is too long, and wants to begin the process of finding a new tenant sooner than that. However, he did not specifically articulate any prejudice that would result from the delayed eviction date the Tenant requested.

24. 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 January 2, 2024 pursuant to subsection 83(1)(b) 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 January 2, 2024.
2. If the unit is not vacated on or before January 2, 2023 then starting January 3, 2024, 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 January 3, 2024.
4. The Tenant shall pay to the Landlord \$1,658.64 (\$7,447.40 - \$5,788.76), which represents compensation for the use of the unit from May 1, 2023 to October 17, 2023, less the amounts which she paid to the Landlord during that same period.
5. The Tenant shall also pay the Landlord compensation of \$43.81 per day for the use of the unit starting October 18, 2023 until the date the Tenant moves out of the unit.
6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. The Landlord owes \$1,371.25 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenant.
8. The total amount the Tenant owes the Landlord as of the date of this order is \$6,262.15.
9. If the Tenant does not pay the Landlord the full amount owing on or before November 18, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 19, 2023 at 7.00% annually on the balance outstanding.
- 10.

November 7, 2023

Date Issued

Jonathan Rosenstein

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 May 14, 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.

