



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

Citation: Metcap Living Management Inc. v Koftinow, 2023 ONLTB 65139

Date: 2023-10-03

File Number: LTB-L-004433-23

In the matter of: 5, 77 PEMBROKE ST
TORONTO ON M5A2N9

Between: Metcap Living Management Inc. Landlord

and

Mark Koftinow Tenant

Metcap Living Management Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Mark Koftinow (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 September 19, 2023.

The Landlord's Legal Representative, Christine Daniel, and the Tenant attended the hearing.

Determinations:

1. For the reasons that follow, I am satisfied on a balance of probabilities that the Tenant persistently paid their rent late.
2. On December 20, 2022, the Landlord served the Tenant an N8 Notice of Termination alleging that the Tenant has persistently failed to pay the rent on the date it was due. The termination date on the N8 notice is February 28, 2023.
3. The Tenant was in possession of the rental unit on the date the application was filed.
4. It was not disputed that the monthly rent is \$1,011.23. It is due on the first of the month.
5. The Landlord's ledger shows that from April 1, 2022 to December 31, 2022, the period included on the N8 notice, the Tenant paid the rent late five out of the nine months. The Tenant made a partial payment towards the rent for September 2022 rent and no payments for October to December 2022. Non-payment of rent is a different cause of termination than persistent late payment of rent and have distinct procedures under the *Residential Tenancies Act, 2006* (the 'Act'). I find that the months for which the Tenant made a partial payment or no payment at all do not constitute a late payment.

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6. While the Tenant initially disputed that he paid the rent late as alleged in the Landlord's N8 Notice of Termination, he did not dispute any of the dates that the payments were made as alleged in the notice and acknowledged several times in his testimony that he has paid the monthly rent late as alleged.
7. The Tenant testified that he was unable to pay the rent on time as it was unclear how much he was required to pay due to the repeated confusing and conflicting information given to him from the Landlord regarding the arrears of rent.
8. The Tenant submitted as evidence several letters he received from the Landlord in March, May, August, and September 2022 regarding rent arrears as well as N4 Notices of Termination that were served in the same corresponding months as the letters. Each letter contained an amount owing that was different than the alleged amount owing in the respective N4 Notice of Termination for that month.
9. The Tenant also submitted as evidence an email to the Landlord that he testified he sent at the end of September 2022. The email shows that the Tenant was requesting clarification about the amount of rent owing. The Tenant testified that he never received a response to this email. He testified that due to his confusion of how much was owed in rent arrears, he did not make any payment at all.
10. The Tenant did not dispute the late payments, and he paid the monthly rent more than 50% of the period of time included in the Landlord's notice. Although the Tenant may have been confused as to how much rent was owing, he was aware of what the monthly rent amount was and did not pay that amount or the amount that he thought was owed at that time. When the Tenant did make payments, they were not on the first of the month, when the monthly rent is due and payable. Therefore, I find that the Tenant has persistently paid their rent late.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Section 83

12. Section 83(3)(a) of the Act states that the Board must refuse to grant an eviction application where satisfied that "the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement". In order for this section to apply the breach must be significant in its impact on the Tenant and it must be ongoing as of the date of the hearing.
13. The Tenant raised a number of issues which I have considered under section 83(3)(a) of the Act.
14. 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.

15. The Tenant submits that there has been continuous noise and banging on his door from guests of another rental unit and the Landlord has not taken steps to address his complaints regarding the excessive noise. The Tenant also submitted that there is rotting garbage outside one of his windows and he is therefore unable to open that window. While these issues may constitute a breach of the Landlord's obligations under sections 21(1) and 22 of the Act, in my view, they are not serious and ongoing breaches of the Landlord's responsibilities within the meaning of s. 83(3)(a) of the Act.
16. The Tenant also submitted that the downstairs Tenants are dealing drugs and that he was threatened on three occasions by guests of those Tenants. The Tenant also testified that the guests of that unit make drug deals through the back exit door, which is right by the Tenant's window. The Tenant could not provide any specific dates or times that the alleged threats happened. The Tenant submitted as evidence an email exchange with the Landlord detailing his complaint to the Landlord about excessive noise and drug dealing. The email exchange shows that the Landlord requested that the Tenant provide specific details and evidence about the alleged drug dealing. The Tenant responded to this email with vague details about issues occurring at all hours.
17. The Landlord has an obligation to respond to a tenant's complaint about the conduct of another resident. In this case, the Landlord requested specific information and evidence required to address the Tenant's complaint and the Tenant did not provide adequate details. I am not satisfied that the exchange discloses a serious breach of the Act within the meaning of s. 83(3)(a) of the Act.
18. Even if I did find that the Landlord did not respond in a reasonable manner, I am not satisfied that the Tenant demonstrated that the interference is substantial or that it amounts to a serious and ongoing breach of the Landlord's obligations under the Act.
19. The Tenant also submitted that there was a stabbing at the residential complex on December 28, 2022 and that although he did not witness the stabbing, he did see the blood on the door. The Tenant provided no evidence or submissions of any further incidents since that time. I am not satisfied that a single isolated incident, although serious, amounts to a serious and ongoing breach of the Landlord's obligations under the Act.
20. The Tenant also submitted that another rental unit at the residential complex was broken into on April 8, 2023. The break in did not happen to the Tenant's unit nor did the Tenant provide any evidence or submissions as to how this constitutes a breach of the Landlord's obligations under the Act.
21. Even if I did find that a break in at another rental unit at the residential complex did constitute a breach of the Landlord's obligations under the Act, I am not satisfied that a single isolated incident amounts to a serious and ongoing breach.
22. Pursuant to section 83(2) of the Act, I must also consider all if the circumstances in deciding whether to exercise discretionary relief from eviction under section 83(1).
23. The Landlord is seeking termination of the tenancy. The Landlord's Legal Representative submitted that the Landlord has filed an L1 Application for rent arrears and that they have a standard order requiring the Tenant to pay the arrears in full or vacate the rental unit. The Landlord submitted that the Tenant has admitted to not paying the rent and that the

tenancy is no longer viable. The Landlord sought to withdraw their request for daily compensation.

24. The Tenant is seeking to preserve the tenancy. The Tenant submitted that he is willing to ensure his rent is paid on time if a proper amount for arrears is established and that he would be able to comply with a conditional order to pay future rent on time.
25. 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 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.
26. Although the Tenant has not made any payments on time since service of the notice, he submitted that he can pay on time once an amount is established for the arrears and he knows what needs to be paid. The Landlord confirmed that an order has been issued for the arrears on the L1 application, thereby establishing the amount to be paid by the Tenant to bring his account current and begin making the full rent payment, in full and on time. Considering all of the above, it would not be unfair to impose a conditional order that the rent be paid on time for 12 months, and in my view, it would be unfair to terminate the tenancy.

It is ordered that:

1. The Landlord's application for eviction of the Tenant is denied on the condition that the Tenant shall pay the Landlord the monthly rent for the months of **November 2023 to October 2024** on time and in full by the **first day** of each corresponding month.
2. If the Tenant fails to make any of the payments in accordance with paragraph 1, and by the dates required 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. The Landlord must make the application within 30 days of a breach of a condition set out in paragraph 1 of this order. The order that results from this section 78 application is usually issued without a hearing.
3. The Tenant shall pay to the Landlord \$186.00, representing the Landlord's cost for filing the application.
4. If the Tenant does not pay the Landlord the full amount owing on or before October 14, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 15, 2023 at 7.00% annually on the balance outstanding.

October 3, 2023

Date Issued

Candace Aboussafy

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.