



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

Citation: Di livio v Earles, 2023 ONLTB 64667

Date: 2023-09-26

File Number:
LTB-L-025544-23

In the matter of: 13 JUNE CALLWOOD WAY BRANTFORD
ON N3T0V1

Between: Ludovico Di livio Landlord
Michele Di livio

And

Kylee Earles Tenant

Ludovico Di livio and Michele Di livio (the 'Landlord') applied for an order to terminate the tenancy and evict Kylee Earles (the 'Tenant') because:

- because the Tenant(s) did not pay the rent that the Tenant(s) owe(s); **(L1 application)** and
- because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant **(L2 application)**.

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket costs that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

These applications were heard by videoconference on September 19, 2023.

Only the Landlord attended the hearing. The Landlord was represented by Jackie Struthers.

As of 9:09am, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, an order shall issue terminating the tenancy on October 7, 2023 and requiring the Tenant to pay the rent arrears and outstanding utilities.
2. **Based on my finding on the L2 application, the tenancy is terminated and so there can be no opportunity to void termination by paying the outstanding arrears claimed on the L1 application.**
3. The Tenant was in possession of the rental unit on the date the application was filed and continued to be in possession of the rental unit as of the hearing date.
4. By way of background, this is a month-to-month tenancy in which rent is due on the 10th of each month in the amount of \$2,550.00.

Preliminary Issue: Request to Amend the L2 application

5. At the hearing, the Landlord sought to amend their L2 application to include a claim for the unpaid utility arrears in the amount of \$2627.93 pursuant to subsection 88.2 of the Act.
6. The Landlord's evidence was, a copy of the amended L2 application was served to the Tenant via courier and email on September 11, 2023 and proof of service was submitted to the Board. No response was received from the Tenant.
7. Based on the submissions before the Board, the Landlord's request to amend their L2 application is granted as I find that the Landlord has complied with the Board's Rules of Procedure regarding the amendment of applications.
8. I proceeded to hear the merits of the Landlord's applications.

Rent Arrears

9. 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.
10. Based on the monthly rent, the daily rent/compensation is \$83.84. This amount is calculated as follows: \$2,550.00 x 12 months, divided by 365 days.
11. The Tenant has not made any payments since the application was filed.
12. The rent arrears owing to October 9, 2023 total \$27,050.00.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

14. The Landlord seeks an order for eviction and payment of the rent arrears.

Substantial interference & Compensation for Unpaid Utilities

15. On March 6, 2023, the Landlord gave the Tenant an N5 notice of termination with a termination date of March 31, 2023. This notice was deemed served on March 11, 2023, as it was sent by mail. The notice of termination alleges the Tenant has failed to pay the utilities that are their responsibility under the tenancy agreement.
16. At the hearing, the Landlord's uncontested evidence was the Tenant did not correct their conduct by bringing the utility accounts in good standing within seven days after receiving the N5 notice of termination. This remedy period was between March 11-18, 2023. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the Residential Tenancies Act, 2006 (Act).
17. The Landlord's uncontested evidence was, under the lease agreement, the Tenant is responsible to pay the water, gas and electricity bills along with the hot water tank rental. A copy of the lease agreement was submitted into evidence in support of this assertion.
18. However, since May 2022 the Tenant has failed to pay the water utility bill totalling \$1,399.50 and since June 2022, the Enercare utility bill, totalling \$1,228.43. A copy of these bills were submitted into evidence in support of this assertion.
19. The Landlord submits that this has resulted in the Landlord having to support their home and maintain the rental property which has caused financial strain in their household and resulted in missed mortgage payments and the accrual of interest.
20. The Landlord submits the Tenants' conduct has substantially interfered with the lawful right, privilege or interest of the Landlord and as a result, the Landlord seeks a termination of the tenancy and repayment of the utilities that are owing, in the amount of \$2,627.93.

ANALYSIS

21. Based on the uncontested evidence before the Board, I am satisfied the Tenant has substantially interfered with the lawful right, privilege or interest of the Landlord by failing to pay the utility bills which now total \$2,627.93. I say this based on the tenancy agreement, water bills and testimony from the Landlord.
22. I also find the arrears and costs owing to October 9, 2023 total \$27,236.00.
23. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

24. The Landlord collected a rent deposit of \$2,550.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$86.98 is owing to the Tenant for the period from May 10, 2022 to September 19, 2023.
25. 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.
26. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

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 October 7, 2023.
2. If the unit is not vacated on or before October 7, 2023, then starting October 8, 2023, 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 October 8, 2023.
4. The Tenant shall pay to the Landlord \$20,523.42 which represents the arrears owing to the date of the hearing, less the last month rent deposit and interest owing on this deposit.
5. The Tenant shall also pay to the Landlord \$2,627.93, which represents the reasonable out-of-pocket expenses the Landlord has incurred as a result of the unpaid utility costs.
6. The total amount the Tenant owes to the Landlord is \$23,151.35.
7. The Tenant shall pay the Landlord compensation of \$83.84 per day for the use of the unit starting September 20, 2023 until 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 October 7, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 8, 2023 at 6.00% annually on the balance outstanding.

September 26, 2023

Date Issued

Sonia Anwar-Ali

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.

