



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

Citation: Stewart v Keays, 2023 ONLTB 64267

Date: 2023-09-18

File Number: LTB-L-048811-22

In the matter of: 1241 Main Street East Hamilton
ON L8K1A8

Between: Dorothy Stewart Landlord

And

Dylan Keays and Carol Keays Tenants

Dorothy Stewart (the 'Landlord') applied for an order to terminate the tenancy and evict Dylan Keays and Carol Keays (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on June 2, 2023. Only the Landlord and Landlord's agent V. Taylor attended the hearing. The Tenants were 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 of the hearing date, the Tenants were still in possession of the rental unit.
2. The lawful rent is \$2,000.00. It is due on the 1st day of each month.
3. The Tenants have not paid the total rent that the Tenants were required to pay for the period from June 1, 2022 to June 30, 2023.
4. The rent arrears owing to June 30, 2023 are \$26,000.00
5. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
6. The Landlord collected a rent deposit of \$2,000.00 from the Tenants 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.

N4 Notice

7. At the hearing a preliminary issue arose with respect to the validity of the N4 Notice of Termination ('N4 notice'). This relates to the lack of a unit number on the N4 notice.

8. The general requirements for a valid notice of termination are set out in section 43 of the *Residential Tenancies Act, 2006* (the 'Act'). Specifically, subsection 43(1)(a) requires that the notice shall "identify the rental unit for which the notice is given".

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9. The Landlord's agent advised the Board that the rental complex is comprised of multiple self-contained units, none of which have properly assigned unit numbers. This is inconsistent with the requirements of the Act.
10. Since the N4 Notice did not identify a unit number for this tenancy, the N4 notice is rendered invalid.

Amending L1 Application to L9 Application for Arrears and Costs Only

11. As a result of the defect with the N4 Notice, the options were explained to the Landlord and her agent including the possibility of requesting consent to withdraw this L1 Application to correct the N4 Notice, which may lead to filing a new L1 Application if she wished to pursue eviction based on these periods of rent arrears.
12. The hearing was held down while the Landlord and her agent took time to seek legal advice. The Landlord returned to the hearing and requested to amend this application to an L9 application for arrears only, without seeking eviction. I consented to the request to seek only arrears. The Landlord was aware that the Board's order on an L9 application would be only for arrears, which would have to be enforced in another jurisdiction such as small claims court upon any breach.
13. The issue of amending an application was raised in the case *Nejad v Preddie*, 2016 ONSC 4348 (CanLII), where the Divisional Court upheld a Board decision allowing an application to proceed to collect arrears despite a defective N4 notice.
14. Further, section 201(1)(f) of the *Act* permits the Board to amend an application during a hearing, if the Board considers it appropriate to do so and if amending the application would not be unfair to any party. I consented to the request to amend the application as there is no prejudice or unfairness to the Tenants since the N4 notice contemplates that arrears may be sought.

It is ordered that:

1. The Tenants shall pay to the Landlord \$26,201.00. This amount includes rent arrears owing up to June 30, 2023 and the cost of the application.

2. If the Tenants do not pay the Landlord the full amount owing on or before September 29, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 30, 2023 at 6.00% annually on the balance outstanding.

September 18, 2023

Date Issued

Donna Adams
Member, Landlord and Tenants 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.

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