



**Order under Section 69 / 89
Residential Tenancies Act, 2006**

Citation: Hollinger v Mayson, 2023 ONLTB 59612

Date: 2023-08-29

File Number: LTB-L-036983-22

In the matter of: UNIT 114, 320 WESTMINSTER AVE
LONDON ON N6C5H5

Between: Bonnie Hollinger Landlord

And

Coleen Mayson Tenant

Bonnie Hollinger (the 'Landlord') applied for an order to terminate the tenancy and evict Coleen Mayson (the 'Tenant') because:

- the Tenant has been persistently late in paying the Tenant's rent.
- 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;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable outof-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on August 10, 2023.

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

Determinations:

Request for Adjournment Denied

1. At the outset of this hearing, the Tenant requested an adjournment to have legal representation. She stated she submitted a request to reschedule this matter about two weeks ago and it was denied by the Board. She also stated that she just received the documents for the N5 Notice and needs legal representation to address that issue. She also stated that two of the three lawyers she contacted are scheduled for other matters today. However, the third one she retained told her if the matter is adjourned he can represent her at the next hearing.
2. The Landlord's Legal Representative opposed any adjournment as his office has no record or indication that the Tenant has retained a Legal Representative. The Tenant's request to reschedule made prior to the hearing was denied because it was not on consent. The Landlord's Legal Representative submitted that the Landlord does not consent to an adjournment as the Tenant has not paid rent for 14 months. The Landlord's Legal Representative acknowledged that this application is persistent late payment of rent, not non-payment, but the Tenant has been on notice since June of 2022 that the Landlord intends to terminate the tenancy on this basis. The Landlord's Legal Representative further submitted that the Landlord is not pursuing the N5 Notice or the claim for damages.
3. The Tenant's request for an adjournment was denied. The Tenant has had ample time and opportunity to retain legal representation prior to this hearing. This application was sent to the Tenant on June 20, 2023, nearly two months before the hearing. Further, the Landlord is not pursuing the N5 Notice and claim for damages which is the majority of the disclosure just recently served on the Tenant.
4. The Notice of Hearing Package, which the Tenant did not dispute receiving, provides the following information:

REPRESENTATIVES or LEGAL ASSISTANCE

If you are a Tenant and wish to obtain legal advice, contact your local community legal clinic. To find your local legal clinic, contact Legal Aid Ontario at 1-800-668-8258. Please seek legal advice PRIOR to your hearing.

Tenant Duty Counsel has also created an online registration system to request legal assistance if you have a scheduled hearing which can be accessed at www.tdc.acto.ca

5. In addition, the Tenant had the opportunity to speak with Tenant Duty Counsel prior to the start of the hearing.

N5 Notice of Termination and Damage Claim

6. The Landlord sought to withdraw the N5 Notice and damages claim, and I consented to this request.

N8 Notice of Termination

7. The Tenant was in possession of the rental unit on the date the application was filed.
8. The Landlord served a Notice to End Tenancy at the End of Term (N8 Notice) alleging that the Tenant has persistently paid the rent late pursuant to section 58 of the *Residential Tenancies Act, 2006* (the 'Act').
9. Section 58 of the Act states in part:
 - (1) A landlord may give a tenant notice of termination of their tenancy on any of the following grounds:
 1. The tenant has persistently failed to pay rent on the date it becomes due and payable.
 - (2) The date for termination specified in the notice shall be at least the number of days after the date the notice is given that is set out in section 44 and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term.
10. The N8 Notice was served on the Tenant on June 29, 2022 and provided a termination date of August 31, 2022, which is more than 60 days. There was no dispute that the tenancy is currently month-to-month and rent is due on the 1st day of every month. Therefore, August 31, 2022 is the day a period of the tenancy ends. I am therefore satisfied that the N8 Notice was properly served in accordance with section 58 of the Act.
11. The Tenant paid the rent late 5 out of the 6 months listed in the N8 Notice. The Tenant failed to pay the rent on the 1st day for January 2022, March 2022, April 2022, May 2022, and June 2022.
12. Further, the Tenant has continued to pay the rent late by not paying the rent at all since the service of the N8 Notice every month for the period of July 1, 2022 to August 31, 2023.
13. The Tenant stated that she informed the Landlord that she only gets paid on a certain date and the rent was only a couple days late. She also stated that she had withheld the rent because the Landlord failed to maintain the Fridge and A/C.
14. Based on the evidence before me, I find that the Tenant has persistently failed to pay the rent on the date it was due. The Tenant failed to pay the rent on the day it was due 5 out

of 6 months prior to the N8 Notice being served and has now paid the rent late by not paying the rent at all for the last 13 months. There was no evidence that the Landlord agreed to the Tenant's late payments because of the Tenant's pay dates.

15. The Tenant was required to pay the Landlord \$12,108.95 in daily compensation for use and occupation of the rental unit for the period from September 1, 2022 to August 10, 2023.
16. Based on the Monthly rent, the daily compensation is \$35.20. This amount is calculated as follows: \$1,070.68 x 12, divided by 365 days.
17. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
18. There is no last month's rent deposit.

Relief from Eviction

19. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
20. The Tenant stated that she prefers to leave when she finds the right place. She stated that she needs 3 months. Her children will be starting school in September, one is in elementary and one is starting their first year in high school. She has been looking for a place for over a year and has applied for RGI housing. She started a job about 3 weeks ago but it's only P/T until she completes 500 hours. Previously she was on E.I. and OW.
21. The Landlord's Legal Representative submitted that the Tenant has been persistently late in paying the rent, to grant a 3 month delay would require the Tenant to pay those accruing rents, however the Tenant's past behaviour has demonstrated that payment would be unlikely and therefore this relief would be unfair.
22. The Tenant has continued to pay the rent late by not paying the rent at all. Given this and the Tenant's disclosed current financial status, it is unlikely that the Tenant could meet a conditional order for payment on time. Therefore, in these circumstances, I find that it would be unfair to the Landlord to grant a conditional order or delay the eviction.

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 September 9, 2023.

2. If the unit is not vacated on or before September 9, 2023, then starting September 10, 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 after September 10, 2023.
4. The Tenant shall pay to the Landlord \$12,108.80, which represents compensation for the use of the unit from September 1, 2022 to August 10, 2023.
5. The Tenant shall also pay the Landlord compensation of \$35.20 per day for the use of the unit starting August 11, 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. If the Tenant does not pay the Landlord the full amount owing on or before September 9, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 10, 2023 at 6.00% annually on the balance outstanding.

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

August 29, 2023

Date Issued

Lisa Del Vecchio

Member, Landlord and Tenant Board

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 March 10, 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.