



## **Order under Section 78(6) Residential Tenancies Act, 2006**

**Citation:** 1248153 Ontario Ltd. o/a Harbourview Apts. v Moore, 2023 ONLTB 56787

**Date:** 2023-08-23

**File Number:** LTB-L-029725-23

**In the matter of:** 504, 5 ANN ST  
MISSISSAUGA ON L5G3E8

**Between:** 1248153 Ontario Ltd. o/a Harbourview Apts. Landlord

**And**

David Moore Tenant

1248153 Ontario Ltd. o/a Harbourview Apts. (the 'Landlord') applied for an order to terminate the tenancy and evict David Moore (the 'Tenant') because the Tenant failed to meet a condition specified in the order issued by the Board on February 16, 2023 with respect to application LTB-L-030461-22.

A hearing was held to consider this application.

This application was heard by videoconference on July 12, 2023.

The Landlord's representative David Ciobotaru and the Tenant attended the hearing.

**Determinations:**

1. The order provides that the Landlord can apply to the Board under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenant to terminate the tenancy and evict the Tenant if the Tenant does not meet certain condition(s) in the order. This application was filed within 30 days of the breach.

The Breach

2. The alleged breach of order LTB-L-030461-22 is that the Tenant did not pay April 2023's rent on or before April 1, 2023. The monthly rent is \$1,759.79.
3. The Landlord introduced into evidence a rent ledger which shows that April 2023's rent was not paid.

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4. The Tenant testified that he paid the rent for April 2023 on March 31, 2023 through his online banking. This was not an e-transfer but rather the Tenant has the Landlord set up as a “payee” for bill payments.
5. The Tenant introduced into evidence a screenshot of his checking account transactions. A payment of \$1,800.00 was made to “Briarlane” which the Tenant testified is the Landlord. The problem with the document submitted by the Tenant is it does not list the transaction date. The Tenant submitted that the reason the date is missing is because he made a number of transactions on the same day, and he cannot fit the rent payment and the transaction date into one screenshot. The Tenant refused to hold his phone up to the screen to show the transaction date and then to scroll down to the rent payment.
6. The party bringing an application always carries the ultimate burden of proving their application on a balance of probabilities. However, once a landlord provides evidence that rent was not paid, the onus shifts to the Tenant to positively establish that the rent was in fact paid.
7. I find that the Tenant did not pay the monthly rent for April 2023 on or before April 1, 2023 in accordance with the order. I find the Landlord’s rent ledger to be reliable evidence of what was paid and when. Additionally, I draw an adverse inference that the Tenant was unable to produce a record that showed on what date he made the \$1,800.00 payment. Such a record could have easily been produced by printing out the transactions from a computer, going to the bank to get a physical copy of the record, or scrolling down from the transaction date on zoom as suggested at the hearing.

#### Arrears owing

8. The previous application includes a request for an order for the payment of arrears of rent and the order requires the Tenant to make payments by specific due dates. Accordingly, in addition to eviction, the Landlord is entitled to request an order for the payment of arrears owing.
9. The Tenant was ordered to pay \$15,649.47 for rent arrears, and the application filing fee in the previous order. The amount that is still owing from that order is \$15,049.47 and that amount is included in this order. This order replaces order LTB-L-030461-22.
10. Since the date of the previous order, the Tenant has failed to pay the full rent that became owing for the period from February 1, 2023 to July 12, 2023. The amount outstanding for that period is \$530.39.

#### The rent deposit

11. The Landlord collected a rent deposit of \$1,716.87 from the Tenant and this deposit is still being held by the Landlord.
12. Interest on the rent deposit in the amount of \$22.70 is owing to the Tenant for the period from January 1, 2023 to July 12, 2023.

13. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenant is required to pay.

Daily compensation

14. The Landlord is entitled to daily compensation from starting July 13, 2023 until the date the Tenant moves out of the unit at a daily rate of \$57.85. This amount is calculated as follows: \$1,759.79 x 12 months, divided by 365 days.

Section 83 considerations

15. The Tenant requested relief from eviction in the form of a repayment plan. The Tenant suggested that he can pay off all the arrears by the end of November 2023. The Tenant works on commission and as such his income fluctuates.
16. I am not satisfied that it would be fair in the circumstances to impose a repayment plan as I am not satisfied that the Tenant will abide by it. This is because the Tenant did not abide by the last payment plan, and he still works the same job. There have been no significant changes in the Tenant's circumstances that support that he will now abide by a repayment plan.
17. 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. The outstanding arrears are substantial, and the Landlord has been waiting a significant amount of time for repayment.

**It is ordered that:**

1. Order LTB-L-030461-22 is cancelled.
2. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before September 3, 2023.
3. If the unit is not vacated on or before September 3, 2023, then starting September 4, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. 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 4, 2023.
5. The Tenant shall pay to the Landlord \$13,840.29. This amount represents the rent owing up to hearing date, less the rent deposit and interest the Landlord owes on the rent deposit.
6. The Tenant shall also pay to the Landlord \$57.85 per day for compensation for the use of the unit starting July 13, 2023 to the date the Tenant moves out of the unit.

7. If the Tenant does not pay the Landlord the full amount owing on or before September 3, 2023 the Tenant will start to owe interest. This will be simple interest calculated from September 4, 2023 at 6% annually on the balance outstanding.

**August 23, 2023**  
**Date Issued**

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Amanda Kovats  
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 expires on March 1, 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.

\* Refer to the attached Summary of Calculations.

## SUMMARY OF CALCULATIONS

### Amount the Tenant must pay the Landlord:

Reason for amount owing	Period	Amount
Amount of arrears owing from previous order	Up to January 31, 2023	\$15,049.47
New Arrears	February 1, 2023 to July 12, 2023	\$530.39
Less the rent deposit:		-\$1,716.87
Less the interest owing on the rent deposit	January 1, 2023 to July 12, 2023	-\$22.70
Plus daily compensation owing for each day of occupation starting July 13, 2023		\$57.85 (per day)

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<b>Total the Tenant must pay the Landlord:</b>	<b>\$13,840.29 + 57.85 per day starting July 13, 2023</b>
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