



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

Citation: Vekaria v Miller, 2023 ONLTB 56666

Date: 2023-08-16

File Number: LTB-L-043926-22

In the matter of: Lower, 1095 HARRISON AVE
WINDSOR ON N9C3J2

Between: Shrey Vekaria Landlord

And

Todd Miller and Jessyca Underwood Tenant

Shrey Vekaria (the 'Landlord') applied for an order to terminate the tenancy and evict Todd Miller and Jessyca Underwood (collectively the 'Tenant') because:

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

This application was heard by videoconference on July 25, 2023

The Landlord and their Representative Richard Lammers attended the hearing.

As of 10:41 am, 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 arrears and compensation in the application. Therefore, the tenancy will be terminated and arrears/compensation ordered.
2. As of the hearing date, the Tenant was still in possession of the rental unit.

L1 Application:

3. 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.

4. The lawful rent is \$1,100.00. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$36.16. This amount is calculated as follows: \$1,100.00 x 12, divided by 365 days.
6. The Tenant has not made any payments since the application was filed.
7. The rent arrears owing to July 31, 2023 are \$22,000.00.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$1,100.00 from the Tenant 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.
10. Interest on the rent deposit, in the amount of \$28.72 is owing to the Tenant for the period from January 1, 2021 to July 25, 2023.

L2 Application: N5 Notice of Termination Substantial Interference

11. On July 18, 2022, the Landlord gave the Tenant an N5 notice of termination deemed served on the same day. The notice of termination contained the following allegations:
 - On March 4, 2022, a City By-law Enforcement Officer inspected the residential complex
 - The Tenant had left large amounts of refuse, garbage and domestic and commercial waste in the yard and had discarded household items
 - The Landlord received a notice from the City to clean up the yard
 - The Tenant did not clean up the yard despite being served with the notice
 - The City of Windsor removed the waste on May 4, 2022 and charged the Landlord the cost of \$2,001.54
 - On June 21, 2022, the residential complex was inspected again by a City By-law Enforcement Officer who noted new amounts of refuse, garbage and domestic and commercial waste in the yard and discarded household items
 - The Landlord received a second notice for clean up which was served on the Tenant
12. The Landlord provided evidence of the present condition of the property with photos of the yard from May 2023. The pictures clearly show that the condition of the property has returned to its pre-clean up state. The Landlord also gave testimony at the hearing which substantially confirms the allegations above.
13. As a result, I find that the presence of the waste in the yard and the Tenant's refusal to remove it substantially interferes with the reasonable enjoyment of the residential complex or lawful right, privilege or interest of the Landlord or another tenant
14. Up to the date of the hearing, the waste remains in the yard.
15. Therefore, the Tenant did not void the N5 notice of termination within seven days in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).

16. The Tenant is liable for the costs of the clean up, and this has been claimed by the Landlord in the amount of \$2,001.54.

Relief from Eviction:

17. 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.

18. The Landlord attempted a payment plan with the Tenant, but there was no reply.

19. The Landlord was not aware of any circumstances meriting relief from eviction and the Tenant was not at the hearing to provide evidence.

20. The Tenant did not comply with the N5 notice or the two orders of the city and the residential unit continues to be littered with waste.

21. The arrears owing are also substantial, which is highly prejudicial to the Landlord.

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 August 27, 2023.
2. If the unit is not vacated on or before August 27, 2023, then starting August 28, 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 August 28, 2023.
4. The Tenant shall pay to the Landlord **\$20,861.28** on or before August 27, 2023, which includes the rent to the hearing date hearing and the cost of filing the application, subtracting the rental deposit and the interest owing on it. See Schedule 1 for the calculation of the amount owing.
5. The Tenant shall pay to the Landlord \$36.16 per day for compensation for the use of the unit starting July 26, 2023 until the date the Tenant moves out of the unit.
6. If the Tenant does not pay the amount owing by August 27, 2023, the starting August 28, 2023, Tenant will start to owe interest. This will be simple interest calculated from August 28, 2023 at 6.00% annually on the balance

August 16, 2023
Date Issued

James Campbell
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 February 28, 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.

Schedule 1
SUMMARY OF CALCULATIONS

A. Amount the Tenant must pay as the tenancy is terminated

Rent Owing To Hearing Date	\$21,804.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,100.00
Less the amount of the interest on the last month's rent deposit	- \$28.72
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$20,861.28
Plus daily compensation owing for each day of occupation starting July 26, 2023	\$36.16 (per day)

2023 ONL TB 56666 (CanLI)