



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

**Citation:** 1680274 Ontario Ltd. v Feeney, 2023 ONLTB 49170

**Date:** 2023-07-24

**File Number:** LTB-L-070771-22

**In the matter of:** Upper Apartment, 1072 AVENUE RD, TORONTO  
ON M5N2C9

**Between:** 1680274 Ontario Ltd. Landlord

**And**

Suzanne Feeney Tenant

1680274 Ontario Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Suzanne Feeney (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 28, 2023.

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

### **Determinations:**

1. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,727.69. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$56.80. This amount is calculated as follows: \$1,727.69 x 12, divided by 365 days.
5. The Tenant has paid \$10,324.06 to the Landlord since the application was filed.

6. The rent arrears owing to June 30, 2023 are \$1,685.51. The Tenant disputed the arrears owing to the Landlord.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.

Relief from Eviction

9. 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 not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
10. The Tenant testified that she had paid the rent for November and December 2022 in the manner that she had for the past 14 years by leaving the money order outside of her door for the Landlord to collect.
11. At the last hearing, it came to her attention that the Landlord had not received the rent for November and December 2022. For the December 2022 payment, she was able to cancel the money order and replace it. The Landlord and the Landlord representative confirmed that the rent payment in the amount of \$1685.56 for December 2022 had been received.
12. For the month of November 2022, the Tenant confirmed and provided documentary evidence that the payment had been made via money order however it was still showing outstanding with the bank. The Landlord and the Landlord's representative confirmed that they had not received the payment.
13. The Tenant acknowledged that the payment is still outstanding but confirmed that the bank has told her that the Landlord has to search for the lost payment with the bank. I find that it is Landlord has the onus of proving that the rent has not been paid. The Landlord has proven their case. It is the Tenant's obligation to ensure that the monthly rent is paid. I find that the Tenant has not ensured that the money order has or has not been cashed and the Tenant should remedy this situation with the bank.
14. I find that it would not be unfair to impose a conditional order as eviction is the last resort. The Tenant has testified that she had gone to the bank to determine if the money order had been cashed and does have the ability to sort out the status of the money order with the bank. I find the Tenant can complete the search for the money order with the bank and remit the payment to the Landlord.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. The Tenant shall determine the status of the money order in the amount of \$1,685.51 for the outstanding month of rent for December 2022 and pay the amount owing to the Landlord on or before August 4, 2023.
3. If the Tenant fails to comply with the conditions set out in paragraph 2 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application on or before August 4, 2023.
5. If the Tenant does not pay the Landlords the full amount owing on or before August 4, 2023, the Tenants will start to owe interest. This will be simple interest calculated from August 5, 2023 at 6.00% annually on the balance outstanding.

**July 24, 2023**

**Date Issued**

\_\_\_\_\_ **Camille Clyne**

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.

**Schedule 1**  
**SUMMARY OF CALCULATIONS**

**A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before July 31, 2023**

Rent Owing To July 31, 2023	\$15,464.95
Application Filing Fee	\$186.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$12,051.75
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$3,599.20</b>

**B. Amount the Tenant must pay if the tenancy is terminated**

Rent Owing To Hearing Date	\$13,599.97
Application Filing Fee	\$186.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$12,051.75
<b>Less</b> the amount of the last month's rent deposit	- \$0.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$1,734.22</b>
Plus daily compensation owing for each day of occupation starting June 29, 2023	\$56.80 (per day)