



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

Citation: Mitusinski v Dass, 2023 ONLTB 50319

Date: 2023-07-21

File Number: LTB-L-058700-22

In the matter of: 2505, 99 HARBOUR SQUARE
TORONTO ON M5J2S2

Between: Kazimierz Mitusinski Landlord

And

Randy Dass Tenant

Kazimierz Mitusinski (the 'Landlord') applied for an order to terminate the tenancy and evict Randy Dass (the 'Tenant') because:

- the Tenant has been persistently late in paying the Tenant's rent.

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

The Landlord, the Landlord's Representative Roman Andrzejewski, the Tenant, and the Tenant's Representative Barrington Lue Sang attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated and the Tenant must vacate the rental unit by August 1, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On July 21, 2022, the Landlord gave the Tenant an N8 notice of termination deemed served that date. The notice of termination contains the following allegations: you have paid your rent late 9 times in 9 months.
4. At the hearing, the Tenant disputed the validity of the N8 notice, specifically whether it provides sufficient reasons and details. I find that it does. The N8 notice states that the reason for ending the tenancy is: "you have persistently paid your rent late." In the details section, there are several payment dates and amounts listed, all of which are past the 1st of the month as well as including partial payment amounts. A tenant receiving this notice would be able to understand the allegations against them and adequately respond to them at the hearing. It is important to emphasize the precise dates the payments were made were specified in the N8 notice (e.g. Jan 12/22, Feb 14/22, etc.).

5. I find the Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the 1st day of each month. The rent has been paid late 8 times in 8 months:
 - January 1, 2022 was paid on January 12 and January 14, 2022
 - February 1, 2022 was paid on February 14, 2022
 - March 1, 2022 was paid on March 2 and March 4, 2022
 - April 1, 2022 was paid on April 15, 2022
 - May 1, 2022 was paid on May 9, May 14, and May 28, 2022
 - June 1, 2022 was paid on June 16, 2022
 - July 1, 2022 was paid on July 26, 2022
6. The Landlord's Representative submitted that the non-payments of rent from September 2022 to June 2023 for which he also filed an L1 application for (LTB-L-005129-23) should also be considered late payments. I am not prepared to accept this submission here for two reasons. First, it is not necessary for my determination of this application as this time period extends beyond the allegations in the N8 notice. Second, I am not convinced that an applicant can circumvent the void period provided in ss. 59(3), 74(2), 74(3)(b), and 74(4) of the *Residential Tenancies Act*, 2006 (the 'Act') by labelling a non-payment to be a late payment. This undercuts the Act's framework for how tenants can respond to notices and applications for arrears. More specifically, a tenant can void a rent arrears notice, discontinue an application, and even void a final order by paying the arrears owed. But for late payments, there is no such recourse. To find that non-payments constitute late payments would result in a significant advantage to landlords who could otherwise proceed with L2 applications and seek orders which do not allow tenants to void and continue the tenancy, contrary to what the Legislature provided to tenants for arrears. Therefore, I have not considered the non-payments from September 2022 to June 2023 to be late payments and those arrears can be dealt with in the hearing of the L1 application.
7. At the hearing, the Landlord requested daily compensation for use of the unit from September 1, 2022 to June 28, 2023 despite their application not doing so. There was no request to amend the application in writing before the hearing. Applying Rule 15.4 of the LTB Rules of Procedure, I must deny the request to amend at the hearing because it would prejudice the Tenant and is not consistent with a fair proceeding. The application given to the Tenant did not indicate that compensation would be sought. As a result, the Tenant would not be prepared to respond to the amended application and claim for compensation for a significant period of time. I also note that an L1 application has been filed for the same time period with a hearing to be scheduled, and any rent or compensation owing by the Tenant can be addressed in that proceeding. Therefore, this order does not include any compensation from September 1, 2022 to June 28, 2023.
8. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord's application failed to acknowledge that the Landlord had collected a rent deposit of \$1,900.00 from the Tenant and this deposit is still being held by the Landlord. The application is amended to include this rent deposit.
10. In accordance with subsection 106(10) of the Act the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

Relief from Eviction

11. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
12. While I am sympathetic to the Tenant's alleged injuries from a car accident, he submitted no evidence or medical records purportedly because his former paralegal was retaining them and he did not have access to them. The Landlord submitted evidence of correspondence from that paralegal stating "I can advise that I have returned anything relating to [the Tenant's] file to him and I had done so well prior to the last hearing date" (Landlord's Exhibit 1).
13. In addition to the medical records issue, the Tenant testified that he was going to be receiving a settlement 2 days after the hearing and would be able to pay his rent on time going forward. To address this issue, at the hearing I made an oral direction, on the consent of the parties, allowing the Tenant to submit evidence of sufficient funds or a settlement to the Landlord and the Board by July 5, 2023 at 4:00pm. The Landlord was given an opportunity to respond by July 7, 2023 at 4:00pm.
14. As of the order issuance date the Tenant had not submitted any evidence of his ability to pay or any submissions on why he has not followed up on this opportunity.
15. I have also considered the Landlord's circumstances, his ongoing health and family circumstances, and the effect that the late payments have had on him in both regards in reaching this conclusion.

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 1, 2023.
2. If the unit is not vacated on or before August 1, 2023, then starting August 2, 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 2, 2023.
4. The Tenant's rent deposit is applied to the rent owing by the Tenant for the month of July 2023.
5. The Tenant shall pay to the Landlord \$201.00 for the cost of filing the application.
6. If the Tenant does not pay the Landlord the full amount owing on or before August 1, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 2, 2023 at 6.00% annually on the balance outstanding.

July 21, 2023
Date Issued

 Elan Shemtov
 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 of the Tenant expires on February 2, 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.