



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

**Citation:** 260 Wellesley Residences v Haywood, 2023 ONLTB 51856

**Date:** 2023-07-17

**File Number:** LTB-L-018372-22

**In the matter of:** 805, 240 WELLESLEY ST E  
TORONTO ON M4X1G5

**Between:** 260 Wellesley Residences Landlord

**And**

Warren Haywood Tenants  
Ashley Hawkins

260 Wellesley Residences (the 'Landlord') applied for an order to terminate the tenancy and evict Warren Haywood and Ashley Hawkins (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on May 3, 2023.

The Landlord's legal representative and direct employee, Charlie Bobrowsky, and the Tenant, Warren Haywood, attended the hearing. The Tenant declined the opportunity to speak with Tenant Duty Counsel on the hearing date.

**Determinations:**

Preliminary Issue # 1 – Adjournment Request

1. The Tenant requested that the matter be adjourned on the basis that they allege that they only received 5 business days notice on April 25<sup>th</sup> for the hearing. The Tenant also sought the assistance of having his own lawyer attend on the hearing date.
2. The Landlord was opposed to the adjournment request on the basis that the matter had already been previously adjourned on October 11, 2022 and the Tenant was still not making payments to the Landlord for more than a year. Also on the basis that the application was approaching the Board's monetary jurisdiction and any further delay would cause significant prejudice to the Landlord.
3. The adjournment request was denied at the hearing. The Tenant had 9 days to prepare for the hearing and I was not satisfied that the Tenant had taken any effort to seek out their

own legal counsel for the hearing. Additionally, the matter had been previously adjourned which provided the Tenant with more than ample time to prepare and to submit their evidence and retain counsel and elected not to. It is also not a legal right to have counsel represent a party at a hearing at the Board.

Preliminary Issue # 2 – The other named Tenant – Ashley Hawkins

4. The Tenant alleges that Ashley Hawkins should not be a party to the proceedings on the basis that they do not reside in the rental unit.
5. The Landlord was opposed to removing Ms. Hawkins from the proceedings on the basis that there was no notice provided by Ms. Hawkins and because both named Tenants are on the lease agreement. There had been no previous mention that Ms. Hawkins was not residing in the rental unit.
6. It was unclear as to which date the Tenant claims that Ms. Hawkins is not in possession of the rental unit, therefore, they remain as a party to the proceedings.

Preliminary Issue # 3 – Service of the N1 Notice of Rent Increase

7. At the hearing, the Tenant alleged that they never received the Landlord's N1 Notice of rent increase for the rent increase that took effect on January 1, 2023. The Tenant states they never received the notice.
8. Since this was the first notice from the Tenant to the Landlord that they were disputing the notice of rent increase, the Landlord was permitted to call their witness, Annabelle Chipongian (AC), to give oral testimony at the hearing.
9. AC testified that she served the Tenant the N1 Notice of Rent Increase by putting it in the mail slot in the Tenants door on September 24, 2022. This is how she served all of the notices that were required that day. In support of her evidence, the Landlord submitted a copy of the serving list that was used on the day AC delivered all of the notices of rent increase.
10. The Tenant suggested that they were providing false testimony to the Board and the Tenant further disputed that the serving list should be considered evidence that the notice was served.
11. On a balance of probabilities, I find that the Landlord served the notice of rent increase to the Tenants through the mail slot on September 24, 2022 with an effective increase date of January 1, 2023. There was nothing in the testimony of AC that would make me question their credibility on their evidence and the Tenant failed to provide any evidence to the contrary besides denying receiving it.

L1 Application

12. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenants 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.

13. As of the hearing date, the Tenants were still in possession of the rental unit.
14. The lawful rent as of January 1, 2023 is \$1,815.28. It is due on the 1st day of each month.
15. Based on the Monthly rent, the daily rent/compensation is \$59.68. This amount is calculated as follows:  $\$1,815.28 \times 12$ , divided by 365 days.
16. The Tenants have not made any payments since the application was filed on March 30, 2022.
17. The Tenant indicated that they believe they have paid more to the Landlord because they suggest that in March of 2022 the Landlord had lost a rental cheque and so the Tenant had paid by Interac in February and provided 7 additional personal cheques to the Landlord.
18. The Landlord disputes receiving the cheques from the Tenant and has not received any payments from the Tenant since the Interac payments in February.
19. The Tenant provided oral testimony at the hearing but could not recall any specific details regarding the cheques or the date he provided the Landlord with the cheques or whom he made the cheques out to. The Tenant also suggested that the Landlord is a scammer and that they go by several different names at the complex. However, aside from the Tenants assertion that the Landlord is a "scammer" and a fraud and the entire thing is a sham, the Tenant provided no evidence that would suggest that the Landlord in this application is not who they say they are.
20. The Landlord asserts that the Landlord for this rental unit is in fact 260 Wellesley Residences as per the N4 notice and corresponding L1 application.
21. On this basis, and with the lack of credible evidence from the Tenant, I find that the Landlord is correctly named in the proceedings.
22. The rent arrears owing to May 31, 2023 are \$26,828.40.
23. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
24. The Landlord collected a rent deposit of \$1,771.00 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.
25. Interest on the rent deposit, in the amount of \$14.92 is owing to the Tenant for the period from January 1, 2023 to May 3, 2023.

### s.83 Discretionary Relief from Eviction

26. The Tenant is struggling financially and is working to get his own small business enterprises up and running. The Tenant sought to have the Board order a payment plan in order to preserve the tenancy, or the Tenant would experience further hardship on the streets if they were evicted.
27. The Tenant could not provide any sort of assurance that they could pay the monthly rent and did not know how much they could pay towards the arrears because their businesses were just new. Also, the Tenant indicated that they had other employment prospects but

that he had been discriminated against and those opportunities did not provide him employment.

28. Further to this, the Tenant has lived in the rental unit since 2019 and often goes hungry with sometimes only having a can of tuna to eat.
29. The Landlord was opposed to any sort of payment plan on the basis that the Tenants had not made any payments to the Landlord since February of 2022 and has made no effort to catch up on the arrears since that time.
30. After hearing the submissions from both parties, I do not believe the tenancy is viable. While I am empathetic with the Tenant's circumstances of food scarcity and not having money available for a payment plan, it would be a hardship on the Landlord as well to continue not receiving any rent money from the Tenant.
31. 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 not be unfair to postpone the eviction until July 31, 2023 pursuant to subsection 83(1)(b) of the Act.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$30,644.96 if the payment is made on or before July 31, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after July 31, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before July 31, 2023**
5. If the Tenants does not void the order, the Tenants shall pay to the Landlord \$23,592.24. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$59.68 per day for the use of the unit starting May 4, 2023 until the date the Tenants moves out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before July 28, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 29, 2023 at 6.00% annually on the balance outstanding.

8. If the unit is not vacated on or before July 31, 2023, then starting August 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 1, 2023.

**July 17, 2023**

**Date Issued**

\_\_\_\_\_  
Terri van Huisstede  
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 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.

**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	\$30,458.96
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$30,644.96</b>

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

Rent Owing To Hearing Date	\$25,192.16
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,771.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$14.92
<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$23,592.24</b>
Plus daily compensation owing for each day of occupation starting May 4, 2023	\$59.68 (per day)