



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

**Citation:** Wolski v Hewlett, 2023 ONLTB 50364

**Date:** 2023-07-17

**File Number:** LTB-L-070552-22

**In the matter of:** 1077 ROLAND ST  
SUDBURY ON P3A2C4

**Between:** Henry Wolski and Elena Tomashevskaja Landlords

**And**

Richard Hewlett and Sylvia Hewlett Tenant

Henry Wolski and Elena Tomashevskaja (the 'Landlords') applied for an order to terminate the tenancy and evict Richard Hewlett and Sylvia Hewlett (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes and because the Tenant has been persistently late in paying the Tenant's rent.

This application was heard by videoconference on July 4, 2023.

One of the Landlords, Henry Wolski, the Landlords' legal representative, Ashley Friel, and the Tenant attended the hearing.

### **Determinations:**

1. At the beginning of the hearing the Tenant testified that he had only received the Notice of Hearing (the NOH) on June 30, 2023 and that as such he required an adjournment to gather additional evidence.
2. Ashley Friel opposed the request, stating that the Tenant has been given adequate notice of the proceeding and did not inform the Landlords of the adjournment request in advance of the hearing.
3. I note that the LTB file shows that the LTB mailed the NOH to the Tenant on June 20, 2023. In accordance with LTB Rules, the Tenant is deemed to have received the NOH on June 25, 2023. On my stating this to the Tenant he neither elaborated on his claim to have received the NOH five days after the deemed service date, nor elaborated on why he was unable to obtain his desired evidence in advance of the hearing. As such, and on

considering the significant admitted arrears and the Tenant's inability to preserve the *status quo* by paying the on-going rent were the request granted, I determined that there is an insufficient basis to grant the request.

4. It is uncontested that the Landlords 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.
5. It is uncontested that the Landlords served the Tenant with a valid Notice to End Tenancy Early for Persistent late payment of Rent (N8 Notice).
6. It is uncontested that as of the hearing date, the Tenant was still in possession of the rental unit.
7. It is uncontested that the lawful rent is \$2,300.00 and that it is due on the 1st day of each month.
8. It is uncontested that the Tenant has not made any payments since the April 2022 and that the Tenant has persistently paid his rent late in accordance with pleadings in the N8 Notice.
9. It is uncontested that the rent arrears owing to July 31, 2023 are \$36,800.00.
10. The Landlords waive the arrears of rent in excess of the LTB's monetary jurisdiction of \$35,000.00.
11. It is uncontested that the Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. It is uncontested that there is no last month's rent deposit.
13. Based on the monthly rent, the daily rent/compensation is \$75.62. This amount is calculated as follows: \$2,300.00 x 12, divided by 365 days.
14. 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 Landlords 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. Specifically, the Tenant testified that he seeks two months' delayed termination to gather the funds required for the first and last month's rent deposits for another rental unit though he is unable to preserve the Landlords' financial *status quo* by paying the on-going rent to his requested delayed termination date. Ashley Friel opposed this request, testifying that, unfortunately, Henry Wolski is in the last stages of terminal illness and needs timely termination of the tenancy so as to avoid burdening his co-Landlord spouse with administering this matter after his passing.

15. The Tenant has a very lengthy track record of not paying any rent to the Landlords, which has resulted in arrears in excess the LTB's monetary jurisdiction. As well, the Tenant does not have the ability to pay the on-going rent. These circumstances, combined with the clear prejudice to the Landlords that would result from delayed termination, fatally militates against the Tenant's request.

**It is ordered that:**

1. The tenancy between the Landlords and the Tenant is terminated effective July 28, 2023. The Tenant must move out of the rental unit on or before July 28, 2023.
2. If the unit is not vacated on or before July 28, 2023, then starting July 29, 2023, the Landlords 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 Landlords on or after July 29, 2023.
4. The Tenant shall pay the Landlords \$35,000.00 for: 1) the arrears of rent to July 4, 2023 and; 2) the fee the Landlords have paid to file the application.
5. If the Tenant does not pay the Landlords 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.
6. The Tenant shall also pay the Landlords compensation of \$75.62 per day for the use of the unit starting July 5, 2023 until the date the Tenant moves out of the unit.

**July 17, 2023**

**Date Issued**

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Sean Henry

Vice Chair, 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 January 29, 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.