



**Order under Sections 30, 31, 69 and 87
Residential Tenancies Act, 2006**

Citation: Ferawana v Krumholtz, 2023 ONLTB 46622

Date: 2023-06-29 **File Number:** LTB-L-028547-22
& LTB-T-001753-23

In the matter of: 1867 LAKESHORE RD SARNIA
ON N7T7H6

Between: Mahamed Ferawana Landlord

And

D'arcy Krumholtz Tenants Lauren Wade

Mahamed Ferawana (the 'Landlord') applied for an order to terminate the tenancy and evict D'arcy Krumholtz and Lauren Wade (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe (L1 Application).

D'arcy Krumholtz and Lauren Wade (the 'Tenants') applied for an order determining that Mahamed Ferawana (the 'Landlord') failed to meet the Landlord's maintenance obligations under the Residential Tenancies Act, 2006 (the 'Act') or failed to comply with health, safety, housing or maintenance standards (T6 Application).

D'arcy Krumholtz and Lauren Wade (the 'Tenants') also applied for an order determining that Mahamed Ferawana (the 'Landlord'), the Landlord's Superintendent or the Landlord's Agent, substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of the Tenants' household (T2 Application).

This application was heard by videoconference on June 19, 2023.

The Landlord's Legal Representative Kevin Kok and the Tenant D'Arcy Krumholtz and the Tenants' Legal Representative Jeffrey Smith attended the hearing

Determinations:

L1 Application

Preliminary Issue

1. At the hearing, the Landlord's Legal Representative, Mr. Kok, advised the Board the Tenants had vacated the rental unit on May 9, 2023. As such, the Landlord only sought an order for the rent arrears.
2. The Tenants' Legal Representative, Mr. Smith, sought an order dismissing the L1 application on the basis the N4 notice was defective. I explained to Mr. Smith that eviction was no longer in issue since the Tenants had already vacated the rental unit. Mr. Smith's position was that a defective notice of termination should result in the entire application being dismissed. Mr. Smith relied upon the Board's Guideline 11 which provides direction on rent arrears applications. In particular, Mr. Smith cited the following passage from Guideline 11 to support his position:

If the tenant owes the landlord arrears of rent, the landlord may serve the tenant with a notice of termination (Form N4). This notice states that the tenant must pay all the arrears of rent by a date specified in the notice, known as a termination date. The landlord must give each tenant the Form N4 using an approved method. The N4 must be given to the tenant at least 14 days before the termination date for tenancies where the tenant pays rent by month or year. If the tenants pays rent by the week or day, the Form N4 must be given to the tenant at least 7 days before the termination date. The Form N4 must correctly set out how much rent the tenant owes as of the date the Form N4 is given to the tenant.

3. I do not agree with Mr. Smith's reading of this portion of the Guideline. The relied upon section explains the process for terminating a tenancy for rent arrears using an N4 notice. The application before me no longer concerned termination and as a result I did not see the relevance of whether or not the N4 notice was defective. Guideline 11 also describes the proceedings where the Tenants have vacated the rental unit. This description is some paragraphs below the paragraph Mr. Smith cited. It reads:

In some cases, the evidence may establish that the tenant moved out of the rental unit after the L1 Application was filed, but before the hearing date. In that case, the LTB's order will generally include a determination that the tenancy ended on the date the tenant moved out. Further, the order will generally: (1) end the tenancy effective the date the tenant moved out of the rental unit without ordering enforcement through the Court Enforcement Office (Sheriff); and (2) require the tenant to pay rent arrears ending on the date the tenancy ended. Unlike orders for arrears and termination where the tenant is in possession of the unit on the hearing date, the order would not provide the tenant with an opportunity to continue the tenancy by paying all of the arrears by a specified date. As there is a finding that the tenancy has ended, the tenant's rent deposit and interest owing on it will be deducted from the arrears and compensation ordered to the landlord.

4. Mr. Smith further argued that the N4 notice must be served upon both Tenants to give them adequate notice of the rent arrears being sought at the hearing. Without this, Mr. Smith argued, the application should be dismissed. I disagree. The N4 notice must be correct if termination is to be ordered. A defective N4 invalidates the application for eviction, not the application for rent arrears. If the Tenants want to know the amount of rent arrears they

owe, they have the benefit of the L1 application and the Landlord's L1/L9 update sheet to acquaint themselves with the progression of the rent arrears to the date of the hearing.

5. The L1 application filed by the Landlord originally sought termination of the tenancy and an order for the rent arrears. While an order for termination was no longer in issue, I found no reason not to proceed with the portion of the application seeking an order for the arrears of rent.

Rent Arrears

6. The Landlord served the Tenants with a Notice to End Tenancy Early for Non-payment 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.
7. The Tenants were in possession of the rental unit on the date the application was filed.
8. The Tenants vacated the rental unit on May 9, 2023. Rent arrears are calculated up to the date the Tenants vacated the unit.
9. The lawful rent was \$2,226.40 and it increased to \$2,282.06 on April 1, 2023. It was due on the 1st day of each month.
10. The Tenants disputed the monthly rent submitting no N1 notice was served to the Tenants when the rent increased from \$2,200.00 on April 1, 2022. It was the Tenants' position that as a result the monthly rent should still be \$2,200.00.
11. Section 136 of the Residential Tenancies Act, 2006 (the Act), reads as follows:

Rent charged one or more years earlier shall be deemed to be lawful rent unless an application has been made within one year after the date that amount was first charged and the lawfulness of the rent charged is in issue in the application.

12. I asked Mr. Smith if the Tenants had filed an application within one year of April 1, 2022, disputing the amount of the monthly rent and he confirmed they had not. Mr. Smith submitted the suspension of the limitation periods in 2020, during the Covid-19 pandemic, provided the Tenants additional time to raise the issue.
13. I do not agree that the limitation periods contained in the Act have six months added to them in perpetuity. The limitation periods resumed normal operation on September 14, 2020 and in this case, the Tenants had one year from April 1, 2022 to file an application challenging the monthly rent. They did not and pursuant to section 136 of the Act, I find the monthly rent was \$2,282.06 at the time the Tenants vacated the rental unit.
14. The Tenants have paid \$4,453.40 to the Landlord since the application was filed.
15. The rent arrears owing to May 9, 2023 are \$38,420.73. I canvassed the Board's monetary jurisdictional limit with the Landlord's Legal Representative and whether or not the Landlord was aware that once an order is issued by the Board, any amount above the Board's limit is extinguished and not recoverable in any other forum. Mr. Kok advised me the Landlord was aware of Board's limit and wanted to proceed.

16. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
17. The Landlord collected a rent deposit of \$2,200.00 from the Tenants and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
18. Interest on the rent deposit, in the amount of \$77.93 is owing to the Tenants for the period from June 2, 2021 to May 9, 2023.

T2 and T6 Application

19. At the hearing, the Tenants' Legal Representative, Mr. Smith, requested the consent of the Board to withdraw their applications.
20. In accordance with subsection 200(4) of the *Residential Tenancies Act, 2006* (the Act), I consent to the withdrawal of the applications.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated as of May 9, 2023, the date the Tenants moved out of the rental unit
2. The Tenants shall pay to the Landlord \$35,000.00. This amount includes rent arrears owing up to the date the Tenants moved out of the rental unit and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenants. This amount is capped at the Board's monetary limit of \$35,000.00. See Schedule 1 for the calculation of the amount owing.
3. If the Tenants do not pay the Landlord the full amount owing on or before August 29, 2023, the Tenants will start to owe interest. This will be simple interest calculated from July 11, 2023 at 6.00% annually on the balance outstanding.
4. The Tenants' applications are withdrawn.

June 29, 2023

Date Issued

John Cashmore

Member, Landlord and Tenant Board

15 Grosvenor St, 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

File Number: LTB-L-028547-22 & LTB-T-001753-23
SUMMARY OF CALCULATIONS

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

Rent Owing To Move Out Date	\$42,874.13
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$4,453.40
Less the amount of the last month's rent deposit	- \$2,200.00
Less the amount of the interest on the last month's rent deposit	- \$77.93
Total amount of the rent arrears owing to May 9, 2023	\$36,328.80
Total amount owing to the Landlord based on the limit to the Board's monetary jurisdiction	\$35,000.00

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