



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

Citation: 11 Overlea Drive (Kitchener) Limited c/o Realstar Management Partnership v Luisa Botelho, 2023 ONLTB 42577

Date: 2023-06-12

File Number: LTB-L-045542-22

In the matter of: 814, 11 OVERLEA DR
KITCHENER ON N2M5C8

Between: 11 Overlea Drive (Kitchener) Limited c/o Realstar Management Partnership Landlord

And

Luisa Botelho Tenant

11 Overlea Drive (Kitchener) Limited c/o Realstar Management Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Luisa Botelho (the 'Tenant') because:

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

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on May 30, 2023.

The Landlord's representative Faith McGregor, attended the hearing.

As of 10:29 am, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and/or the claim for compensation in the application. Therefore,

the LTB is prepared to accede to the request for termination of the tenancy and for the payment of daily compensation.

2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On August 5, 2022, the Landlord gave the Tenant an N8 notice of termination, and as it was mailed to the tenant, it was deemed to be served on August 10, 2022.
4. The notice of termination contains the following allegations: that the tenant persistently failed to pay the lawful monthly rent on time and that the rent was paid late 6 times in 2022.

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5. The Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the first day of each rental period. The rent has been paid late 13 times in the past 15 months, including 7 times late since the N8 was filed.
6. The Tenant was required to pay the Landlord \$8,155.12 in daily compensation for use and occupation of the rental unit for the period from November 1, 2022 to May 30, 2023. However, as all of the rent has been paid to the end of May 2023, the Landlord is not entitled to this daily compensation.
7. Based on the Monthly rent, the daily compensation is \$38.65. This amount is calculated as follows: $\$1,175.60 \times 12$, divided by 365 days.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$1,200.58 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$22.27 is owing to the Tenant for the period from January 1, 2022 to May 30, 2023.
10. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.
11. 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 be unfair to grant relief from eviction pursuant to subsection 83(1)(a) of the Act.

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 June 23, 2023.
2. If the unit is not vacated on or before June 23, 2023, then starting June 24, 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 June 24, 2023.
4. The Tenant shall pay the Landlord compensation of \$38.65 per day for the use of the unit starting June 24, 2023 until the date the Tenant moves out of the unit.
5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.

June 12, 2023

Date Issued

Renee Lang/James Campbell

Vice Chair/ Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.