



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

**Citation:** 26 Gifford Limited v Welsh, 2023 ONLTB 41047

**Date:** 2023-05-26

**File Number:** LTB-L-062948-22

**In the matter of:** 5, 26 Gifford  
Toronto ON M5A3J1

**Between:** 26 Gifford Limited Landlord

**And**

Duncan Welsh Tenant

26 Gifford Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Duncan Welsh (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on April 27, 2023. The Landlord's legal agent, V. Vytrykush, and the Tenant attended the hearing.

### **Preliminary Issue:**

1. The parties consented to 'Elizabeth Beauparlant' being removed as a party to the application. Pursuant to Rule 15.4 of the Board's Rules of Procedure, the amendment request was granted.

### **Determinations:**

2. The Landlord 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.
3. As of the hearing date, the Tenant was still in possession of the rental unit.
4. The lawful rent is \$1,685.00. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$55.40. This amount is calculated as follows: \$1,685.00 x 12, divided by 365 days.

6. The Tenant has paid \$13,795.00 to the Landlord since the application was filed.
7. The rent arrears owing to April 30, 2023 are \$7,000.00.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

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9. The Landlord collected a rent deposit of \$1,685.00 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.
10. Interest on the rent deposit, in the amount of \$34.85 is owing to the Tenant for the period from June 30, 2022 to April 27, 2023.
11. 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 Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
12. The Tenant testified that the reason that he could not pay rent in full and on time was because he fell victim to an investment scheme. In February 2023, he lost his job, but he has since found a new job. He testified to his income and expenses. He presented a repayment plan whereby he would pay \$1,000.00 on the 20<sup>th</sup> of the month until the arrears are paid in full. The Tenant also testified to the Landlord making threats for non-payment of the rent. The Landlord denied the allegations.
13. The Landlord submitted that the tenancy cannot continue. The Landlord is having difficulty paying to mortgage because of the late or no payments. Further, the superintendent fears the Tenant. The Tenant denied the allegation.
14. In consideration of the foregoing, and that eviction is the remedy of last resort, I find it would not be unfair to grant relief subject to the conditions set out in this order. The Tenant's testimony regarding his income and expenses establishes that he is able to adhere to the repayment plan. I also find the duration of the payment plan to be reasonable.

**It is ordered that:**

1. The Tenant shall pay to the Landlord \$7,186.00, which represents the arrears of rent and the application filing fee outstanding for the period ending April 30, 2023.
2. The Landlord's application for eviction of the Tenant is denied on the condition that:

- (a) The Tenant shall make the following payments to the Landlord in respect of the monies owing under paragraph 1 of this order:

<b>Date Payment Due</b>	<b>Amount of Payment</b>
June 20, 2023	\$1,000.00 (costs and arrears)
July 20, 2023	\$1,000.00 (arrears)
August 20, 2023	\$1,000.00 (arrears)
September 20, 2023	\$1,000.00 (arrears)

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October 20, 2023	\$1,000.00 (arrears)
November 20, 2023	\$1,000.00 (arrears)
December 20, 2023	\$1,186.00 (arrears)

- (b) If the Tenant has not yet paid May 2023 rent, the Tenant shall pay to the Landlord the lawful monthly rent for May 2023 on or before May 31, 2023.
- (c) Commencing June 1, 2023, the Tenant shall also pay the Landlord the lawful rent in full, on or before the first day of each corresponding month for which the Tenant is in the arrears outlined in paragraph 1.
3. If the Tenant fails to make any of the payments in accordance with paragraph 2, and by the dates required, then:
- (a) The Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant, and for the payment of any new arrears of rent and NSF charges not already ordered under paragraph 1 of this order. The Landlord must make the application within 30 days of a breach of a condition set out in paragraph 2 of this order.
- (b) The balance owing under paragraph 1 of this order shall become payable on the day following the date of default. The monies owing shall bear interest at the postjudgment interest rate determined under subsection 207(7) of the Act.

**May 26, 2023**

**Date Issued**

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**Camille Tancioco**

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.

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