



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

**Citation:** Valerie Menzies v Kylee Sparks, 2023 ONLTB 35901

**Date:** 2023-05-17

**File Number:** LTB-L-015896-23

**In the matter of:** 3, 259 Queen Street  
Port Perry Ontario L9L1B9

**Between:** David Menzies Landlords  
Valerie Menzies

**And**

Grant Givogue Tenants  
Kylee Sparks

David Menzies and Valerie Menzies (the 'Landlords') applied for an order to terminate the tenancy and evict Grant Givogue and Kylee Sparks (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on April 27, 2023.

The Landlord Valerie Menzies and the Tenants attended the hearing.

### **Determinations:**

*Preliminary issues: Is the application defective?*

1. The Tenant submitted that the application should be dismissed because the address on the Certificate of Service and the Application is wrong.
2. The correct address of the rental unit is Unit 3, 259 Queen Street, Port Perry, whereas the Certificate of Service and the Application incorrectly state that the address is 'Unit 3, 257 Queen Street, Port Perry'.
3. The address was correctly set out in the N4 notice.
4. Unlike a notice of termination, an application can be amended, and the error on Certificate of Service is not fatal as I am satisfied that the Tenants were in fact served with the N4 Notice.
5. The application is amended to reflect the correct address of the rental unit as 'Unit 3, 259 Queen Street, Port Perry'.

6. However, the N4 notice does have a fatal defect in that it does not correctly identify the time period of the rent arrears. The N4 lists the rental period from 01/01/2023 to

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01/02/2023. The rent is due on the first of each month as testified by the Landlord. Hence the correct rental period is 1<sup>st</sup> of the month to the last day of the month.

7. Section 59(2) of the Residential Tenancies Act, 2006 (the “Act”) requires that an N4 Notice of Termination correctly specify the amount of rent owing. Given the error, the period of rent arrears claimed on the N4 is ambiguous and does not properly reflect the exact periods of monthly rent that are being alleged. Since the N4 Notice does not properly inform the Tenants what specific periods of alleged rent arrears were being claimed, the N4 Notice is invalid.

*Amending L1 Application to L9 Application for Arrears and Costs Only*

8. The Landlord requested to amend this application to an application for arrears only, without seeking eviction.
9. Such amendments were addressed in *Nejad v Preddie*, 2016 ONSC 4348 (CanLII), where the Divisional Court upheld a Board decision allowing an application to proceed to collect arrears despite a defective N4 notice.
10. Further, section 201(1)(f) of the Act permits the Board to amend an application during a hearing, if the Board considers it appropriate to do so and if amending the application would not be unfair to any party.
11. I consented to the request to amend the application as there is no prejudice or unfairness to the Tenant since the N4 notice contemplates that arrears may be sought.
12. The rent arrears owing to April 30, 2023, are \$2,900.00.

**It is ordered that:**

1. The Tenants shall pay to the Landlord \$2,900.00, which represents the amount of rent owing up to April 30, 2023.
2. The Tenants shall also pay to the Landlord \$201.00 for the cost of filing the application.
3. If the Tenants do not pay the Landlord the full amount owing on or before May 30, 2023, the Tenants will start to owe interest. This will be simple interest calculated from May 31, 2022 at 6.00% annually on the balance outstanding.

**May 17, 2023**

**Date Issued**

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**Sheena Brar**

Member, Landlords and Tenants 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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