



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

**Citation:** KILLAM APARTMENT REIT v Nadia Nathaniel, 2023 ONLTB 35672

**Date:** 2023-05-08

**File Number:** LTB-L-054851-22

**In the matter of:** 615, 1355 SILVER SPEAR RD  
MISSISSAUGA ON L4Y2W9

**Between:** KILLAM APARTMENT REIT Landlord

**And**

Nadia Nathaniel Tenant

KILLAM APARTMENT REIT (the 'Landlord') applied for an order to terminate the tenancy and evict Nadia Nathaniel (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on April 11, 2023. The Landlord's legal representative, J. Paine, and the Tenant attended the hearing.

**Determinations:**

1. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,597.69. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$52.53. This amount is calculated as follows: \$1,597.69 x 12, divided by 365 days.
5. The Tenant has paid \$10,750.18 to the Landlord since the application was filed.
6. The rent arrears owing to April 30, 2023 are \$2,030.26.

7. The Tenant disputed to the amount of arrears as she is only owing \$600.00. She states that the Peel region is responsible for paying a large portion of her rent as she receives a subsidy. She pays the remaining balance (\$193.00 for rent and \$105.00 for parking). When asked if the Tenant had spoken to Peel about the arrears, she stated that she did not as they would advise her that their dealings are only with the Landlord.
8. On a balance of probabilities, I find that the Tenant is owing \$2,036.00 in arrears. I base this on the Landlord's Statement of Account submitted into evidence with their update sheet. Once a landlord denies receiving funds, the tenant has an evidentiary burden to

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prove that she paid rent as only the Tenant can prove payment as a positive fact. Although the legal burden rests with the Landlord, I do not find that the Tenant adduced evidence to counter or overcome the Landlord's evidence.

9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. There is no last month's rent deposit.
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. Pursuant to section 83(6), I am required to consider whether the Landlord made attempts to negotiate a payment agreement with the Tenant. The Landlord submitted that the Tenant was sent disclosure and was asked to present a payment plan. However, the Tenant was unresponsive. I am satisfied that the Landlord attempted to negotiate a payment agreement with the Tenant.
13. The Tenant was asked to present a payment plan. She stated that she can pay an additional \$200.00 to the Landlord on the first of the month.
14. As the rent arrears are not substantial, and eviction is a remedy of last resort, I find it would not be unfair to impose the proposed payment plan on the Landlord.

**It is ordered that:**

1. The Tenant shall pay to the Landlord \$2,216.26, 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 1, 2023            | \$200.00 (costs and arrears) |
| July 1, 2023            | \$200.00 (arrears)           |
| August 1, 2023          | \$200.00 (arrears)           |
| September 1, 2023       | \$200.00 (arrears)           |
| October 1, 2023         | \$200.00 (arrears)           |

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|                  |                    |
|------------------|--------------------|
| November 1, 2023 | \$200.00 (arrears) |
| December 1, 2023 | \$200.00 (arrears) |
| January 1, 2024  | \$200.00 (arrears) |
| February 1, 2024 | \$200.00 (arrears) |
| March 1, 2024    | \$200.00 (arrears) |
| April 1, 2024    | \$216.26 (arrears) |

- (b) 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 described 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 8, 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.