



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

Citation: Melrose Park Investments Limited v Carine Evans, 2023 ONLTB 34531

Date: 2023-05-04

File Number: LTB-L-026318-22

In the matter of: 201, 2552 KEELE ST NORTH
YORK ON M6L2N8

Between: Melrose Park Investments Limited Landlord

And

Carine Evans Tenant

Melrose Park Investments Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Carine Evans (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 April 18, 2023.

The Landlord's Legal Representative M. Ciobotaru, the Tenant's representative Karlene Wright and the Tenant attended the hearing.

Determinations:

Preliminary Issue: S.82 issues raised

1. At the outset of the hearing the Tenant sought to raise issues under s.82(1) of the Residential Tenancies Act, 2006 (the 'Act'). However, that section of the Act only applies where the landlord's application before the Board seeks an order for non-payment of rent. As this application concerns alleged persistently late paid rent, the Tenant is not entitled to raise issues under s.82(1).

L2 Application: N8 notice

2. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. However, I will grant relief from eviction on the condition that the Tenant pay the rent on time for the next twelve months.
3. The Tenant was in possession of the rental unit on the date the application was filed.
4. On May 5, 2022, the Landlord gave the Tenant an N8 notice of termination deemed served on the same day. The notice of termination alleges the Tenant has paid her rent late 12 times out of last 14 months
5. I find that 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 month. During the period April 2021 to May 2022, the Tenant paid the rent as follows:

April 2021	Partially paid April 5, 2021 and partially outstanding
May 2021	Paid May 3, May 6 and May 20 and partially towards arrears
June 2021	Partially paid June 1, June 14 and partially outstanding
July 2021	Partially paid July 2, July 5, July 12 and partially outstanding
August 2021	Paid August 2 and August 6 and partially paid towards arrears
September 2021	Partially paid September 1 and partially still outstanding
October 2021	Paid October 1 and partially paid towards arrears
November 2021	Paid November 1 and partially paid towards arrears
December 2021	Partially paid December 2 and partially towards arrears
January 2022	Partially paid January 4, January 10 and partially outstanding.
February 2022	Partially paid February 8, and partially outstanding
March 2022	Pai March 1 and March 18 and paid partially towards arrears
April 2022	Partially paid April 4 and partially outstanding
May 2022	Paid May 2 and partially paid towards arrears.
6. Since the N8 notice has been served the Tenant has improved in her rent payments but she still did not pay in time every month. She was late in July, August, September, October, November 2022 and January, February 2023.

7. The Tenant asserted that rent has been paid on time and the Landlord's system delays the date the payment is recorded.
8. The Landlord's Legal Representative stated that the Landlord's system reflected clearly the day the payment was made even if the system shows a debit on a later day. The Tenant has not only made payments late she has also made many partial payments throughout the period claimed in the N8 notice.
9. The Tenant's representative submitted some proof of payments to show that the Tenant has been paying in time, but I did not find that this evidence establishes that the Tenant has paid on time every month. There were some payments that were reflected late in the Landlord's system but there have been delays as well. Plus, there have been partial payments as well made by the Tenant. I do not find that the Tenant has convinced me that she has been paying in time enough to deny the Landlord the pay-in-time order.

Section 83 considerations

10. 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 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.
11. The Landlord is seeking a 12-month pay on time order with a s.78 clause.
12. The Board issued a previous order before 2021 requiring the Tenant to pay on time for twelve months. The Tenant complied with that earlier order and preserved her tenancy.
13. The Tenant's representative submitted that it is too harsh to require the Tenant to pay on time since it allows the Landlord a chance to evict the Tenant if she is late by a single day even.
14. The Tenant stated that she took over the lease as a single person paying the rent, it has been difficult for her, but she wants to preserve her tenancy. She has been through some medical issues, and it prevents her at times to go to work which causes delays.
15. I do sympathise with the Tenant's circumstances, and I find that it would not be unfair to provide her with an opportunity to continue with her tenancy by paying the rent on time for next 12 months. Under the terms of the lease the Tenant is required to pay the rent by the 1st of every month. Therefore, I find that 12 months pay on time order is justified.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the pays the full rent to the Landlord by the first business day of each month for twelve consecutive months starting on June 1, 2023 and ending on May 31, 2024.
2. If the Tenant fails to comply with the conditions set out in paragraph 2 of this order, 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. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
3. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlord the full amount owing on or before May 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 1 Date at 6% annually on the balance outstanding.

May 04, 2023

Date Issued

_____ **Sheena Brar**

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.