



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

Citation: 1598032 ONTARIO LTD. v PARTH UPADHYE, 2023 ONLTB 33199

Date: 2023-04-27

File Number: LTB-L-033228-22

In the matter of: 401, 15 EASTWOOD ROAD
TORONTO ONTARIO M4L2C4

Between: 1598032 ONTARIO LTD. Landlord

And

PARTH UPADHYE Tenant

1598032 ONTARIO LTD. (the 'Landlord') applied for an order to terminate the tenancy and evict PARTH UPADHYE (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

1598032 ONTARIO LTD. (the 'Landlord') also applied for an order to terminate the tenancy and evict PARTH UPADHYE (the 'Tenant') because the Tenant had been persistently late in paying the Tenant's rent.

This application was heard by videoconference on April 17, 2023.

Only the Landlord's Legal Representative Natasha Mizzi attended the hearing.

As of 10:45 a.m., 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. Since the Tenant did not attend and the Landlord was prepared to proceed, the matter proceeded by way of an uncontested hearing pursuant to section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990.

Determinations:

L1 Application

1. The Tenant paid the Landlord for the period ending April 30, 2023. The amount paid represents all the rent that was in arrears under the tenancy agreement, all additional rent

that would have been due under the tenancy agreement on the date of the Tenant's payment and the filing fee for this application.

2. The Landlord's application for an order terminating the tenancy and evicting the Tenant based upon arrears of rent is discontinued.

L2 Application

3. The Tenant was in possession of the rental unit on the date the application was filed.
4. The Landlord applied for an order to terminate the tenancy and evict the Tenant because the Tenant persistently failed to pay rent when it was due.
5. At the hearing the Landlord's Legal Representative relied on oral submissions and referred to documents to support their application.
6. The Tenant is to pay rent to the Landlord on the first of every month and the tenancy is month to month.
7. The Landlord's evidence was the Tenant has persistently failed to pay the lawful rent on the date it was due. At the time of service of the N8 notice, the rent was paid late 14 consecutive months for the period November 1, 2020 until December 1, 2021.
8. Section 58 of the *Residential Tenancies Act, 2006*, (the 'Act') sets out that a landlord may give a tenant notice of termination of their tenancy if the tenant has persistently failed to pay rent on the date it becomes due and payable (N8 notice). The Landlord mailed the Tenant an N8 notice on December 2, 2021 and it was deemed served on December 7, 2021. The termination date contained on the Notice is February 28, 2022.
9. I accept the uncontested evidence of the Landlord and am satisfied, on a balance of probabilities, that the Tenants have persistently failed to pay the rent on the date it was due.
10. At the hearing the Landlord no longer sought eviction. Their evidence was the Tenant has continued to pay the monthly rent late however they want to afford the Tenant an opportunity to maintain the tenancy. The Landlord requested a conditional order requiring the Tenant pay their rent on time for a period of 12 months.
11. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.

12. 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. I find that a pay-on-time order, as requested by the Landlord, is appropriate in these circumstances. As termination is a remedy of last resort, I find the Tenant should be given another opportunity with a pay-on-time order.

It is ordered that:

1. The Tenant shall pay to the Landlord the full rent owing on or before the first day of each month, commencing May 1, 2023 and for 12 months thereafter up to and including April 1, 2024. Given the date this order is issued, the monthly rent for May 2023 shall not be considered late until May 8, 2023.
2. If the Tenant fails to comply with the conditions set out in paragraph 1 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

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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 \$201.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlord the full amount owing on or before May 8, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 9, 2023 at 6.00% annually on the balance outstanding.

April 27, 2023

Date Issued

John Cashmore

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.