



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

**Citation:** Skyline Living v Joseph Cole, 2023 ONLTB 32793

**Date:** 2023-04-27

**File Number:** LTB-L-012618-23

**In the matter of:** 311, 352A Dacey Road  
Sault Ste. Marie Ontario P6A5J7

**Between:** Skyline Living Landlord

**And**

Joseph Cole Tenant

Skyline Living (the 'Landlord') applied for an order to terminate the tenancy and evict Joseph Cole (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also claimed charges related to NSF cheques

This application was heard by videoconference on April 12, 2023 at 1:00 p.m.

The Landlord, represented by Kyleigh Maille, an employee, and the Tenant, represented by his uncle, Gerard Rooney, attended the hearing.

**Preliminary Issue:**

1. The Tenant's representative submitted that the Tenant vacated the rental unit pursuant to a N11 Agreement to End the Tenancy (the "N11 Form") delivered to the Landlord on or about November 1, 2022. The delivery date of the N11 Form is undisputed.
2. At the hearing I ruled that the N11 was correct, that the termination date of tenancy was December 31, 2022.
3. However, upon further reflection and to elaborate further, I am adding the following reasons for my determination.

4. The Tenant's representative submitted that the N11 Form's tenancy end date was altered to reflect a change from January 1, 2023 to January 31, 2023. A copy of the N11 Form was submitted to the Board which on first glance does not show alteration to the tenancy end date. However upon closer scrutiny it appears there may have been an alteration to the tenancy end date.
5. At the time of the hearing I did not make a finding on the "alteration" of the termination date on the N11 Form.
6. There is no dispute amongst the parties that the Tenant desired to vacate the rental unit at the end of December 2023.
7. The parties agreed that he vacated the rental unit on or about November 30, 2022 and returned vacant possession of the rental unit on or about December 31, 2022
8. The Landlord's representative submitted a copy of an Ontario Standard Form lease signed by the Tenant and the Landlord's representative on April 18, 2020.
9. The Landlord's representative argued that notwithstanding what was contained on the N11 Form's termination date the Tenant signed a Ontario Standard Form Lease (the "Lease") which would prevail in this circumstance. The Lease indicates that the Tenancy was initially a fixed term from March 16, 2020 to March 31, 2021. Upon the completion of the fixed term the tenancy continued on a monthly basis with the same terms and conditions.
10. The Landlord's representative argued that although this was a monthly tenancy the requirements of the Lease, "Section D Ending the Tenancy (Part IV of the Act)" remain the same and state the following;

*"When the tenant can end the tenancy*

*The tenant may end a tenancy by giving the landlord proper notice using the appropriate Landlord and Tenant Board form. They must give*

- *at least 60 days' notice if they have a monthly or fixed term tenancy,*

*For a monthly or weekly tenancy, the notice must be effective on the last day of a rental period (e.g. month or week)"*

The Residential Tenancies Act 2006, (the "Act")

11. The requirement of the Act, Section 88 (1) of the Act states the following;

*"If a tenant abandons or vacates a rental unit without giving notice of termination in accordance with this Act and no agreement to terminate has been made or the landlord has*

not given notice to terminate the tenancy, a determination of the amount of arrears of rent owing by the tenant shall be made in accordance with the following rules:

1. If the tenant vacated the rental unit after giving notice that was not in accordance with this Act, arrears of rent are owing for the period that ends on the earliest termination date that could have been specified in the notice, had the notice been given in accordance with section 47, 96 or 145, as the case may be.”

12. In this case Section 47 of the Act applies, which is as follows:

“Tenant’s notice to terminate, end of period or term

*A tenant may terminate a tenancy at the end of a period of the tenancy or at the end of the term of a tenancy for a fixed term by giving notice of termination to the landlord in accordance with section 44.*

(3) A notice under subsection (1) to terminate a yearly tenancy or a tenancy for a fixed term shall be given at least 60 days before the date the termination is specified to be effective and that date shall be on the last day of a rental period of the tenancy.”

13. In this case the Tenant provided the N11 Form on November 1, 2022; 60 days from this date is December 31, 2022.

14. My ruling is that the termination date of the tenancy is December 31, 2022.

### **Determinations:**

1. The Tenants did not pay the total rent they were required to pay for the period of December 1 to December 31, 2022.
2. The lawful monthly rent is \$1,058.46. It was due on the 1st day of each month.
3. The Landlord is entitled to \$20.00 to reimburse the Landlord for administration charges the Landlord incurred as a result of 1 cheque given by or on behalf of the Tenant which were returned NSF.
4. Rent arrears are calculated up to December 31, 2022.
5. The Landlord collected a rent deposit of \$1,046.98 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
6. Interest on the rent deposit, in the amount of \$27.14 is owing to the Tenants for the period from March 16, 2020 to December 31, 2022.
7. The Landlord incurred costs of \$201.00 for filing the application.
8. I will decline ordering costs to the Landlord for filing the application.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated as of December 31, 2022.
2. The Tenant shall pay to the Landlord \$4.34. This amount includes rent arrears owing up to the date of the termination of tenancy and unpaid NSF charges. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
3. 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.

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**April 27, 2023**

Peter Pavlovic  
Member, Landlord and Tenant Board

**Date Issued**

15 Grosvenor St, 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.

**Schedule 1  
SUMMARY OF CALCULATIONS**

**A. Amount the Tenant must pay as the tenancy is terminated**

Rent Owing To Move Out Date (December 31, 2022)	\$1,058.46
Application Filing Fee	\$00.00
NSF Charges	\$20.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,046.98
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$27.14
<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$4.34</b>

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