



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

**Citation:** Whitmore v Mcevoy, 2023 ONLTB 32493

**Date:** 2023-04-26

**File Number:** LTB-L-024727-22

**In the matter of:** 1B, 2 ALICE STREET  
PETAWAWA ON K8H2P3

**Between:** Dara Lee Whitmore

Landlord

**And**

David Mcevoy

Tenant

Dara Lee Whitmore (the 'Landlord') applied for an order to terminate the tenancy and evict David Mcevoy (the 'Tenant') because the Tenant has been persistently late in paying the Tenant's rent.

This application was heard by videoconference on April 3, 2023. Only the Landlord attended the hearing.

As of 12:02 pm, 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. As a result, the hearing proceeded with only the Landlord's evidence.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application.
2. The Tenant was in possession of the rental unit on the date the application was filed and is still residing in the unit.
3. On March 31, 2022, the Landlord gave the Tenant an N8 notice of termination. The notice was sent to the Tenant by priority post, arriving at the rental unit on March 31, 2022. The notice of termination contains the following allegations: for the eleven months of May 1, 2021 to March 1, 2022, the Tenant was late in paying rent seven of the eleven months. These late payments were received between five to twenty days late. The rent is due on the 1<sup>st</sup> day of each rental period.

4. Based on the Landlord's submissions of seven months late during an eleven month period, I find the Tenant has persistently failed to pay the rent on the date it was due.
5. In further support of her L2 application, the Landlord testified that the Tenant has continued to pay rent late from April 1, 2022 to December 1, 2022. The last rent payment received was on or about January 24, 2023, which was payment for December 2022 rent. For January 1, 2023 to April 1, 2023, the Landlord state the Tenant has not paid any rent.

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6. The Landlord provided submissions concerning the request for non-remedial termination along with submissions regarding the Tenant's circumstances.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord confirmed that she collected a rent deposit of \$850.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$15.50 is owing to the Tenant for the period from December 1, 2019 to April 1, 2023.
9. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.
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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before May 7, 2023.
2. If the unit is not vacated on or before May 7, 2023, then starting May 8, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after May 8, 2023.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing on or before May 7, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 8, 2023 at 6.00% annually on the balance outstanding.

**April 26, 2023**

**Date Issued**

15 Grosvenor Street, Ground Floor,  
Toronto ON M7A 2G6

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**Alex Brkic**

Member, Landlord and Tenant Board

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on November 8, 2023 if the order has not been filed on or before this date with the Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.



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