



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

**Citation:** Aliu v Delainey, 2023 ONLTB 30645

**Date:** 2023-04-17

**File Number:** LTB-L-051682-22

**In the matter of:** Unit 1, 222 EGERTON ST Kitchener  
ON N5Z2G7

**Between:** Sevdi Aliu Landlord

**And**

Dwayne P. Delainey Tenants Jennifer D. Doucette

Sevdi Aliu (the 'Landlord') applied for an order to terminate the tenancy and evict Dwayne P. Delainey and Jennifer D. Doucette (the 'Tenants') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 28, 2023.

The Landlord and the Tenant attended the hearing. The Landlord's Legal Representative N. Ahmed was also present.

**Determinations:**

*Preliminary Issues: Is the N4 service valid? Are utilities included in rent?*

1. The Certificate of Service prepared by the Landlord for the N4 Notice of Termination states that it was mailed to the rental unit on August 16, 2022. The termination date on the N4 Notice is August 31, 2022.
2. Section 191(3) of the *Residential Tenancies Act, 2006* (the "Act") states that a notice or document given by mail shall be deemed to have been given on the fifth day after mailing. Application of that rule here would mean that the N4 Noticer is deemed received on August 21, 2022.

3. Section 59(2) of the Act states that for a monthly tenancy, an N4 Notice must be given to the tenant at least 14 days before the termination date.
4. However, the Landlord's Legal Representative submitted a Xpress post receipt from Canada Post showing that the N4 was in fact sent on August 12, 2022, which means it was deemed served on August 17, 2022 .
5. Based on the evidence before me, I find that the N4 was given to the Tenant at least 14 days before the N12 termination date of August 31, 2022.

*Preliminary Issues: Is the N4 service valid? Are utilities included in rent?*

6. The N4 notice served by the Landlord claims that the Tenants owe \$2,550.00 in rent arrears for the period from May 1, 2022 till July 31, 2022.
7. The Tenants assert that the amount claimed in the N4 Notice is incorrect as they have made additional payments every month in the amount of \$5,100.00 along with rent since the tenancy started with this Landlord in May 2018, which the Landlord has failed to include in the N4 notice.
8. The Landlord's Legal Representative stated that the amount that the Tenants are considering rent payments are their payments towards utilities as per their lease agreement.
9. The Tenant refuted the Landlord's claim that they have to pay utilities separately.
10. The lease agreement submitted to the Board shows that both Landlord and Tenants signed it on 28 April 2018 after the current Landlord took ownership of the property from the former Landlord. The Tenants have been in possession of the rental unit since November 1, 2015.
11. On examining the lease agreement, I find that it clearly states that the Tenants must pay \$850.00 as rent plus 50% of gas and hydro. The terms of the lease with the former Landlord are unknown to me but the Tenants agreed to these terms as the lease agreement shows and have been abiding by them since 2018 and have been paying the rent plus the \$100.00 extra against hydro and gas for the past five years. This is the first time they have been in arrears of rent.
12. The Landlord's Legal Representative also submitted an email correspondence between the Tenant Jennifer Doucette and the Landlord from July 28, 2020 where she acknowledges that they pay rent plus \$100.00 per month for gas and hydro.
13. The Tenant denied signing anything like this and that they do not have a copy of the lease agreement. I find the lease agreement to be valid because the signatures of both Landlord and Tenants there along with a witness. There is no overwriting in the document and the Agreement to Lease form, from CREA, is from 2018 as well.
14. The Landlord testified that the building is very old, and the Tenants' unit and another unit shares the meter, and it cannot be separated so he accepts the \$100.00 each month and

sends the tenants the bills for each year together at the end of the year so that if there is any shortfall, they can pay. The Landlord has never received any payment from the Tenants for the utilities besides the \$100.00 monthly payment.

15. Based on the totality of evidence and the testimony, I find that the \$5,100.00 claimed by the Tenants' as rent payments were in fact their monthly \$100.00 payment towards their share of the gas and hydro, not rent. Therefore, the N4 is valid based on the numbers claimed by the Landlord.

#### *L1 Application*

16. 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.
17. As of the hearing date, the Tenant was still in possession of the rental unit.
18. The lawful rent is \$850.00. It is due on the 1st day of each month.
19. Based on the Monthly rent, the daily rent/compensation is \$27.95. This amount is calculated as follows: \$850.00 x 12, divided by 365 days.
20. The Tenant has not made any payments since the application was filed.
21. The rent arrears owing to March 31, 2023 are \$9,350.00.
22. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
23. The application states that there is no last month's rent deposit. However, the Landlord agrees with the Tenants that they had paid the former landlord a last month's rent deposit in the amount of \$850.00. Hence the application is amended to include last month's rent deposit. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
24. Interest on the rent deposit, in the amount of \$96.66 is owing to the Tenants for the period from November 1, 2015 to March 28, 2023.

#### *Section 83 considerations*

25. 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.

26. The Tenant Jennifer Doucette testified that she had a near-death experience last year and she has been dealing with health issues since 2019. She is self-employed and cannot work full-time. She takes on book-keeping contracts, but they want to preserve their tenancy.
27. The Landlord testified that the Tenants' rent arrears have caused him much financial duress. He cannot pay the property taxes and the city was about to put a lien on the property if he had not arranged money at the last moment.
28. The Tenants are willing to pay \$600.00 extra each month to pay off the rent arrears.
29. Based on all the circumstances I find that it would not be unfair to give the Tenants a chance to preserve their tenancy by granting them their proposed payment plan.

**It is ordered that:**

1. The Tenants shall pay to the Landlord \$9,536.00.00 for arrears of rent up to March 31, 2023 and costs.
2. The Tenants shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:
  - a) On or before April 20<sup>th</sup> 2023 \$ 600.00
  - b) On or before May 15<sup>th</sup> 2023 \$ 600.00
  - c) On or before June 15<sup>th</sup> 2023 \$ 600.00
  - d) On or before July 15<sup>th</sup> 2023 \$ 600.00
  - e) On or before August 15<sup>th</sup> 2023 \$ 600.00
  - f) On or before September 15<sup>th</sup> 2023 \$ 600.00
  - g) On or before October 15<sup>th</sup> 2023 \$ 600.00
  - h) On or before November 15<sup>th</sup> 2023 \$ 600.00
  - i) On or before December 15<sup>th</sup> 2023 \$ 600.00
  - j) On or before January 15<sup>th</sup> 2024 \$ 600.00
  - k) On or before February 15<sup>th</sup> 2024 \$ 600.00
  - l) On or before March 15<sup>th</sup> 2024 \$ 600.00
  - m) On or before April 15<sup>th</sup> 2024 \$ 600.00
3. The Tenants shall also pay to the Landlord new rent for the month of April 2023 on or before April 20, 2023.

4. The Tenant shall also pay to the Landlord new rent on time and in full as it comes due and owing for the period May 1, 2023 to June 30, 2024, or until the arrears are paid in full, whichever date is earliest.
5. If the Tenants fail to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after March 31, 2023.

**April 17, 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.