



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

Citation: Monteleone v Daniel, 2023 ONLTB 29978

Date: 2023-04-14

File Number: LTB-L-021780-22

In the matter of: 5132A 8th Line
Cookstown ON L0L1L0

Between: Antonio Monteleone Landlord

And

Pearl Daniel Tenants
Peter Daniel

Antonio Monteleone (the 'Landlord') applied for an order to terminate the tenancy and evict Pearl Daniel and Peter Daniel (the 'Tenant') because:

- the Tenants have been persistently late in paying the Tenants' rent.

This application was heard by videoconference on March 7, 2023.

The Landlord, the Tenant, Peter Daniel, and the Tenant's legal representative, L. Dubois, attended the hearing. The Landlord was assisted by his son, D. Monteleone, and his friend, S. Carr.

Determinations:

1. The rental unit is in a rural location, and the rent is \$1,430.80 per month. The rental unit provides the Tenant with a place to park his truck.
2. It was undisputed that the Tenants paid the rent late on three occasions in 2022, and also in January and February 2023.
3. The parties have a troublesome relationship, primarily because of an ongoing dispute about parking on the residential complex. They have also disagreed about various other issues in the tenancy. The Landlord alleges that he consented to the tenancy with the

Tenants, despite their bad credit history, because they offered to pay two months as a last month's rent deposit rather than only one month. It is undisputed that the Tenants did not pay the rent for May 2022, because they discovered that they were not legally obligated by the *Residential Tenancies Act, 2006* (the 'Act') to pay two months for the last month's rent deposit, and they unilaterally chose to deduct the extra month's rent deposit and apply it to rent for May 2022. They then paid late in June 2022.

4. Therefore, the undisputed evidence is that the Tenants paid the rent late at least four months in 2022, and two months in 2023.

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5. The Landlord is seeking termination of the tenancy because of the late payments. However, the Landlord is also very angry about the ongoing disputes between the parties, he alleges that there is a "toxic" relationship, and he presented a lot of evidence about their ongoing disputes which was not relevant to this persistent late application.
6. The Tenant said that he was unemployed during 2022, and that led to late payment of the rent in February, March and April 2022. He explained that the failure to pay in May 2022, and the late payment in June 2022, were related to the Tenants' unilateral decision to apply their extra last month's rent deposit to the rent owing. The Tenant alleges that the Landlord demanded the extra last month's rent deposit because of the Tenant's low credit score.
7. The Tenant said that he has had issues finding full time employment, and that has contributed to his inability to pay on time in January and February 2023.
8. The Tenant said that he is now on EI, and he is able to pay the rent in full and on time going forward. He paid the rent for March 2023 on time.
9. The Tenant lives with his wife and step daughter. He said that his income consists of EI with part-time work operating heavy equipment, for a total of over \$5,000.00 per month. He said that when good weather comes he will be making a full time salary of about \$78,000.00 per month. His wife does not work, and she is waiting for ODSP.

Reasons and Analysis:

10. 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. As discussed above, the rent has been paid late at least six times in the past 14 months. This does not include the month of May 2022, when the Tenants unilaterally applied their second last month's rent deposit to the rent for that month.
11. The Landlord incurred costs of \$202.15 for filing the application and is entitled to reimbursement of those costs.

12. The Landlord seeks eviction. However, I find that the Landlord seeks eviction primarily for reasons that are not relevant to this application. The relationship between the parties is broken down, but the Tenants have nevertheless continued to pay the rent, and they have mostly paid the rent on time, even when they were experiencing financial difficulties. The Tenant testified that he has an income that will support paying the rent in full and on time, and his income is going to improve in the next few months.
13. 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. In particular, the evidence supports my finding, on a balance of probabilities, that the Tenants will pay the rent in full and on time going forward.

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It is ordered that:

1. Commencing May 2023, and continuing each month up to and including April 2024, the Tenants shall pay the rent, in full, no later than the first day of each of those months, respectively.
2. If the Tenants fail to comply with paragraph 1 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act'), within 30 days of the breach, without notice to the Tenants, for an order terminating the tenancy and evicting the Tenants.
3. The Tenants shall pay the Landlord's \$202.15 cost of filing the application.
4. If the Tenants do not pay the Landlord the full amount owing on or before May 31, 2023, the Tenants will start to owe interest. This will be simple interest calculated from June 1, 2023, at 6.00% annually on the balance outstanding.

April 14, 2023

Date Issued

Nancy Morris

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.