



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

**Citation:** Guo v Noble, 2023 ONLTB 31382

**Date:** 2023-04-13 **File Number:** LTB-L-026328-22  
& LTB-L-022969-22

**In the matter of:** 397 MALABAR DR  
KINGSTON ON K7M8X1

**Between:** Jiying Guo Landlord

**And**

April Noble and Darryl Noble Tenant

Jiying Guo (the 'Landlord') applied for an order to terminate the tenancy and evict April Noble and Darryl Noble (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes(L1/N4).

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Tenant has been persistently late in paying the Tenant's rent. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date. (L2/N8 Application)

This application was heard by videoconference on February 14, 2023.

The Landlord, Landlord's representative Jeremy Liu, and the Tenant attended the hearing.

### **Determinations:**

1. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$2,277.00. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$74.86. This amount is calculated as follows: \$2,277.00 x 12, divided by 365 days.
5. The Tenant has paid \$6,000.00 to the Landlord since the application was filed.
6. The rent arrears owing to February 28, 2023 are \$18,666.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

### **Validity of the N4**

8. At the hearing, the Tenants raised a preliminary issue concerning the validity of the N4 Notice of Termination ('N4 notice'). The Tenants claim that the N4 Notice was defective because they agreed with the Landlord to use their last month's rent deposit of \$2250.00 for the December 2021 rent payment. Therefore, the N4 Notice was defective in indicating that the Tenant's rent arrears period is for December 2021.
9. The Landlord conceded that she agreed with the Tenant and used the last month's rent deposit of \$2250.00 as December 2021 rent payment.
10. As the parties agreed to use last month's rent deposit of \$2250.00 for December 2021 rent payment, the Landlord's N4 Notice is found defective since it sets out December 2021 as the rent arrears period and requires the Tenant to pay more than the Landlord is lawfully entitled to collect. The N4 Notice does not comply with section 59(2) of the Residential Tenancies Act, 2006 (Act).
11. As the N4 Notice is defective, there is no jurisdiction to terminate the tenancy based on this Notice and application.
12. The Landlord's representative was asked whether he was seeking an arrears-only order in the event that I found the N4 Notice to be defective. He confirmed as such.
13. The Tenant shall pay the Landlord **\$18,852.00** representing rent arrears to February 28, 2023 (\$18,666.00.) and the application filing fee (\$186.00) and the Board does not have the authority to terminate the tenancy.

### **L2 Application**

14. The Landlord applied for an order to terminate the tenancy and evict the Tenant because the Tenant has been persistently late in paying the Tenant's rent. The Landlord served a notice of termination on the Tenant, with a termination date of June 30, 2022.
15. This is a month-to-month tenancy.
16. Rent is due on the first of the month.

17. The Landlord testified that the Tenant has failed to pay the monthly rent in full and on time each month from July 2022 to February 2023. The Landlord's N8 had a "Schedule A" attached to it in which the Landlord indicated the rental period, the rent charged, the amount paid and the date the rent was paid.
18. The Tenant did not dispute that they have been persistently late in paying the rent in full or on time each month from July 2022 to February 2023 and February 2023. The Tenants claim that the persistent late payments or rent arrears are due to their roommate not moving in at the last minute and also because she earns only \$15.75 an hour at value village for 40hrs weekly husband receives monthly \$2,066.00 Employment Insurance benefits.
19. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
20. On balance, the evidence shows that the Landlord has had many conversations with the Tenant regarding late payment of rent and had even waived the rent payments for October and November 2021. Although the Tenants denies the Landlord ever discussed the late payment of rent with them, it is clear the Tenant continued to pay rent late from July 2022 to February 2023, and it is undisputed that the Tenant ceased paying the Landlord any rent beginning July 2022. There is no indication that the Tenant is capable of paying the rent in full and on time moving forward.

**It is ordered that:**

**Regarding the L1 Application:**

1. The Tenant shall pay the Landlord \*\$18,852.00, representing arrears of rent to February 28, 2023, (\$18,666.00) and the application filing fee (\$186.00).
2. If the Tenant does not pay the Landlord the full amount owing\* on or before April 24, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 25, 2023 at 5.00% annually on the balance outstanding.

**Regarding the L1 Application:**

1. The tenancy between the Landlord and the Tenant is terminated, as of April 24, 2023. The Tenant must move out of the rental unit on or before April 24, 2023.
2. The Tenant shall also pay the Landlord compensation of \$74.86 per day for the use of the unit starting February 15, 2023 until the date the Tenant moves out of the unit.

3. If the unit is not vacated on or before April 24, 2023, then starting April 25, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. 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 April 25, 2023.
5. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

**April 13, 2023**

**Date Issued**

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Percy Laryea

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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on October 25, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.