



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Dagenais v Fernandes, 2023 ONLTB 29509

**Date:** 2023-04-05

**File Number:** LTB-L-048316-22

**In the matter of:** 1377 LAUZON RD  
WINDSOR ON N8S3N2

**Between:** Dave Dagenais Landlord

**And**

Miranda Fernandes Tenant

Dave Dagenais (the 'Landlord') applied for an order to terminate the tenancy and evict Miranda Fernandes (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 27, 2023.

The Landlord Dave Dagenais and the Landlord's Legal Representative Gillian Dischiavo and the Tenant Miranda Fernandes and the Tenant's Legal Representatives Tori-Lee Jenkins and Ravdeep Chauhan attended the hearing.

### Determinations:

#### Preliminary Issue

1. At the hearing, the application was amended on consent to remove the former Landlord and add Dave Dagenais as the current Landlord. Mr. Dagenais purchased the rental unit on September 9, 2022 and the tenancy transferred to him.

#### L1 Application

2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The monthly rent is due on the first day of each month. At the hearing, the parties disagreed as to the lawful monthly rent. The Landlord stated it was \$907.00 while the Tenant contended the monthly rent is \$875.00.
4. The Tenant explained that at the time Mr. Dagenais became the Landlord, the monthly rent was \$875.00. This was not disputed and is supported by the N4 Notice and the L1 application.
5. Section 116 of the *Residential Tenancies Act, 2006* (the Act) reads as follows:

116(1) A landlord shall not increase the rent charged to a tenant for a rental unit without first giving the tenant at least 90 days written notice of the landlord's intention to do so.

(2) Subsection (1) applies even if the rent charged is increased in accordance with an order under section 126.

(3) The notice shall be in a form approved by the Board and shall set out the landlord's intention to increase the rent and the amount of the new rent.

(4) An increase in rent is void if the landlord has not given the notice required by this section, and the landlord must give a new notice before the landlord can take the increase.

6. The Landlord acknowledged he increased the monthly rent on two occasions without providing the required notice to the Tenant pursuant to section 116 of the Act. The Landlord's evidence was he believed the Tenant was made aware of the increases through various conversations they had had.
7. I am satisfied on a balance of probabilities the monthly rent has not been legally increased in accordance with the Act. Verbal communications are not forms of Notice the Act permits when a Landlord intends to increase the monthly rent. Therefore, I find the lawful monthly rent is \$875.00.

#### N4 Notice of Termination

8. Section 59(2) of the Act sets out requirements for the contents of an N4 Notice of Termination. This section reads as follows:

The notice of termination shall set out the amount of rent due and shall specify that the tenant may avoid the termination of the tenancy by paying, on or before the termination date specified in the notice, the rent due as set out in the notice and any additional rent that has become due under the tenancy agreement as at the date of payment by the tenant.

9. The N4 Notice of Termination served on the Tenant contains three rental periods. The first of which is April 1, 2022 until April 30, 2022. The Notice stipulates the rent charged for this period was \$875.00 and the rent paid was \$0.00. This \$875.00 is included in the "Total Rent Owing" box in which the Landlord provides a final total amount the Tenant must pay to void the N4 Notice. In this case, the total amount includes the monthly rent for April 2022, May 2022 and June 2022. All of these months show rent charged of \$875.00, with no payments having been made. The total amount required to void the N4 Notice as stipulated on the Notice is \$2,625.00.
10. The Tenant submitted rent receipts into evidence. One of them is dated January 31, 2022 and is for an amount equal to two month's rent. The Tenant also submitted a rent receipt dated March 9, 2022. It is also for an amount equal to two month's rent. The receipt itself stipulates on it "Rent Due 2 months".

11. The Tenant's evidence was the first receipt from January 26, 2022 was for the monthly rent for January and February 2022 while the second receipt dated March 9, 2022 was payment for the monthly rent due in March 2022 and April 2022.
12. The Landlord's evidence was the Tenant paid her rent to either himself or another person even though he was not the Landlord at the time. He gave no specific evidence as to the circumstances of these payments. The Landlord submitted no ledger from the time these payments were made that would illustrate how these payments were accounted for. The Landlord did not call the former landlord to give evidence in relation to the payment receipts and what rental periods these payments were applied to.
13. I am satisfied on a balance of probabilities the two months of rent paid by the Tenant to the former landlord on January 26, 2022 were applied to January and February 2022. I say this because the N4 Notice does not allege rent arrears for these months. As a result, I am further satisfied the rent receipt dated March 9, 2022 applies to March and April 2022. Again, the N4 Notice does not allege rent arrears owing for March of 2022 so it is a logical inference that the money paid on March 9, 2022 to the former landlord was applied to the monthly rent due in March 2022. This inference is also in keeping with the Tenant's evidence.
14. On all of the evidence, I am convinced the remaining \$875.00 from the March 9, 2022 payment was for the monthly rent due on April 1, 2022. I find on a balance of probabilities the rent owing for April 2022, at the time the N4 Notice was served, was \$0.00. Therefore, the former landlord served an N4 Notice to the Tenant with an incorrect amount required to void since the total sought included the full amount of the monthly rent for April 2022.
15. Since the N4 Notice did not comply with section 59(2) of the Act, I find it defective and the Landlord's application for eviction is denied. This determination was not made at the hearing. It was made post hearing after consideration of the evidence presented. I am aware of no jurisprudence or legislation that renders section 59(2) of the Act inapplicable in these circumstances.

#### Arrears of Rent

16. An L1 application seeks two separate orders. One is for eviction and the other is for the arrears of rent. In this case, the eviction application will be denied for the reasons already mentioned above.
17. The Landlord submitted an L1/L9 update sheet in support of the rent arrears they are seeking. The amounts contained on this update are wrong. The form indicates the Tenant made payments of \$4,400.00 since the application was filed and their attached schedule accounts for only \$4,100.00. The update sheet indicates the monthly rent changed on March 1, 2023 yet their attached schedule shows this amount to be included in their calculations since January 1, 2023.
18. The Tenant submitted another rent receipt dated October 13, 2022 in which she paid the Landlord \$2,600.00. The Landlord's evidence at the hearing accounted for only \$1,300.00. The Landlord did not dispute this payment and acknowledged their calculation of payments made by the Tenant since the application was filed is incorrect.

19. The Tenant's evidence was that she had made other payments that were not accounted for but had lost the receipts. The Tenant acknowledges she owes two months of rent to the Landlord. I find it more likely than not the Tenant has made additional payments to the Landlord and inaccurate accounting on the part of the Landlord has contributed to the increased amount being sought.
20. It is not the Tenant's burden to prove the rent arrears owing. The Tenant has convinced me on a balance of probabilities the schedule of the Landlord and the amounts being alleged are incorrect.
21. In these circumstances I find it would not be unfair to dismiss the application for an order for rent arrears. However, the Tenant has acknowledged two months of rent is outstanding. I found the Tenant's evidence to be the only reliable evidence presented at the hearing and it was in part substantiated by rent receipts. On a balance of probabilities, based on the documentary and oral evidence from the Tenant and the lack of reliable evidence from the Landlord, I find the Tenant owes the Landlord \$1,750.00 in rent arrears.
22. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

**It is ordered that:**

1. The Landlord's application for eviction is denied.
2. The Tenant shall pay to the Landlord \$1,936.00 for arrears of rent owing up to March 31, 2023 and costs.
3. If the Tenant does not pay the Landlord the full amount owing on or before April 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 1, 2023 at 6.00% annually on the balance outstanding.

**April 5, 2023**  
**Date Issued**

\_\_\_\_\_  
John Cashmore  
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.