



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

Citation: *Monrose v Kerwin*, 2023 ONLTB 27587

Date: 2023-03-30

File Number: LTB-L-046908-22

In the matter of: 6417 Natalie Way
Ottawa ON K1C4Y2

Between: Georges Monrose Landlord

And

Christine Kerwin and Jennifer Murphy Tenants

Georges Monrose (the 'Landlord') applied for an order to terminate the tenancy and evict Christine Kerwin and Jennifer Murphy (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on March 16, 2023.

The Landlord and the Tenant, Jennifer Murphy ('JM'), attended the hearing. JM stated that she was appearing on behalf of herself and the Tenant Christine Kerwin ('CK').

Preliminary Issues

1. JM requested an adjournment of the hearing so that this application can be scheduled together with a T2 application that the Tenants filed in LTB-T-077425-22. Otherwise she asked that she be permitted to raise the issues in the T2 application at this hearing. The Tenants did not request that these matters be heard together in advance of the hearing. The Tenants also did not give the Landlord and the LTB a list of any issues the Tenants intend to raise under section 82 of the Residential Tenancies Act, 2006 (the 'Act') in advance of the hearing. The Landlord stated that he has not yet seen a copy of the T2 Application and was not prepared to respond to that application or the allegations in it. The Landlord opposed the adjournment request, stating that he is having difficulty paying the mortgage and other expenses when the rent is not paid, so he wanted the application to proceed as scheduled. I denied the adjournment request because the Landlord would be prejudiced if it were to be granted, particularly because of his stated financial difficulties resulting from the Tenants' non-payment of rent. The Tenants are obligated to pay the rent even if there are issues with respect to which they believe they are entitled to a remedy. In such a situation, the Tenants' recourse would be to file a tenant application, which they have done. Any prejudice to the Tenants caused by the denial of the adjournment request is minimal, because the T2 application will still be scheduled in the normal course, through which they can seek whatever remedies they believe they are entitled to.

2. The Landlord served the N4 notice on the Tenants by email. Under section 191 of the Act and rule 3.1(h) of the Board's Rules of Procedure, a person or party can be served with a notice or document by email if the person or party receiving it has consented in writing to service by email. The Landlord stated that the parties agreed in the tenancy agreement that documents could be served by email. The Tenant stated that the lease only provided that the rent would be paid by email transfer. The parties did not file a copy of the tenancy agreement, however, JM confirmed that she did receive the N4 notice by email. Regardless of whether the Tenants agreed in writing to receive notices by email in the tenancy agreement, under subsection 191(2) of the Act, even if the N4 notice was not given in accordance with the Act, it is deemed to have been validly given if it is proven that its contents actually came to the attention of the person for whom it was intended within the required time period. Because JM admitted to having received the N4 notice by email, I find that it is deemed to have been validly given.

Determinations

3. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenants 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.
4. As of the hearing date, the Tenants were still in possession of the rental unit.
5. The lawful rent is \$2,100.00. It is due on the 1st day of each month.
6. The Tenants have paid \$7,050.00 to the Landlord since the application was filed.
7. The rent arrears owing to March 31, 2023 are \$9,750.00. The parties agreed that this is the amount of rent arrears owing to March 31, 2023.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Section 83 Analysis

9. The Landlord sought an order terminating the tenancy and evicting the Tenants. He stated that he has to pay the mortgage for the rental unit every month, and that the Tenants' nonpayment of rent is causing him financial hardship because it is not possible to keep up with the mortgage payments when the rent is not paid.
10. The Tenants sought an order implementing a payment plan to repay the rent arrears over time. JM stated that she works as a nurse in a retirement home, and her net income is approximately \$3,600.00 per month. JM stated that CK recently began working full time, but she did not have information about CK's income. JM stated that including the monthly rent of \$2,100.00, her monthly expenses are approximately \$3,000.00.
11. JM proposed a payment plan whereby the Tenants would pay the monthly rent and \$250.00 toward the rent arrears by the middle of each month until the rent arrears are paid in full. In addition, JM stated that the Tenants would be able to make a lump sum payment of \$3,000.00 immediately. JM indicated that the Tenants may be able to pay more than \$250.00 in some months, but did not want to be required to pay more than this and risk breaching the payment plan. The amount of time it would take to repay the rent arrears is substantial, but I find that prejudice to the Landlord would be

minimal, because his primary concern was with difficulty in paying the mortgage when the rent is not paid. I find that JM’s proposed payment plan is reasonable in the context her monthly income and expenses, and that any prejudice to the Landlord can be addressed by the Tenant being required to pay the monthly rent, a one-time lump sum payment of \$3,000.00, and thereafter at least \$250.00 toward the rent arrears each month, and by the payment plan being subject to section 78 of the Act.

12. The rent is due on the first day of each month under the lease. I do not have the authority to change this contractual obligation. The Tenant asked that this order require payment of the rent by the middle of each month because that would better align with when she is paid. The rent remains due by the first of each month under the tenancy agreement, but for the purpose of the conditional aspect of this order, the the monthly rent must be paid by the 15th day of each month. The monthly payment toward the rent arrears will also be due by the 15th day of each month until the rent arrears and costs are paid in full.
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.
14. Although I did not hear the Tenants’ T2 application or the Tenants’ issues under section 82 of the Act, I did consider whether any of these issues could be serious and ongoing for the purpose of subsection 83(3)(a) of the Act. This is because under that section, I would be required to refuse to grant the application if the Landlord is currently in serious breach of his responsibilities under the Act or a material covenant of the tenancy agreement. The Tenant confirmed that the issues are not ongoing as of the hearing date. I am therefore not required to refuse to grant the application under subsection 83(3)(a) of the Act.

It is ordered that:

1. The Landlord’s application to evict the Tenants and terminate the tenancy is denied, on the condition that the Tenants shall pay to the Landlord \$9,936.00 for arrears of rent up to March 31, 2023 and costs.
2. The Tenant shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:

Date Payment Due	Amount of Payment
April 15, 2023	\$3,000.00 (costs and arrears)
May 15, 2023	\$250.00 (arrears)
June 15, 2023	\$250.00 (arrears)
July 15, 2023	\$250.00 (arrears)
August 15, 2023	\$250.00 (arrears)

September 15, 2023	\$250.00 (arrear)
October 15, 2023	\$250.00 (arrear)
November 15, 2023	\$250.00 (arrear)
December 15, 2023	\$250.00 (arrear)
January 15, 2024	\$250.00 (arrear)
February 15, 2024	\$250.00 (arrear)
March 15, 2024	\$250.00 (arrear)
April 15, 2024	\$250.00 (arrear)
May 15, 2024	\$250.00 (arrear)
June 15, 2024	\$250.00 (arrear)
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February 15, 2025	\$250.00 (arrear)
March 15, 2025	\$250.00 (arrear)

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April 15, 2025	\$250.00 (arrears)
May 15, 2025	\$250.00 (arrears)
June 15, 2025	\$250.00 (arrears)
July 15, 2025	\$250.00 (arrears)
August 15, 2025	\$186.00 (arrears)

3. The Tenants shall also pay to the Landlord new rent that comes due and owing on or before the 15th day of the month in which it comes due for the period April 1, 2023 to August 31, 2025, or until the arrears are paid in full, whichever date is earliest.
4. 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 Tenants to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenants, apply to the LTB within 30 days of the Tenants' breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenants and requiring that the Tenants pay any new arrears, NSF fees and related charges that became owing after March 31, 2023.

March 30, 2023

Date Issued

Mark Melchers

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.