



Order under Section 69
Residential Tenancies Act, 2006

File Number: LTB-L-004823-23

In the matter of: Apt 8, 1023 WESTON RD YORK
ON M6N3R9

Between: Paul Caruana Landlord

And

Macdonald Ndikumana Tenant

Paul Caruana (the 'Landlord') applied for an order to terminate the tenancy and evict Macdonald Ndikumana (the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes (L1 Application); and
- the Tenant has been persistently late in paying the Tenant's rent; (L2 Application).

This application was heard by videoconference on March 9, 2023. The Landlord and the Tenant attended the hearing.

Determinations:

L1 Application – Non-Payment of Rent

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 \$1,082.15. It is due on the 1st day of each Monthly.
4. Based on the Monthly rent, the daily rent/compensation is \$35.58. This amount is calculated as follows: \$1,082.15 x 12, divided by 365 days.

5. The Tenant has paid \$2,164.30 to the Landlord since the application was filed.
9. The rent arrears owing to March 31, 2023 are \$1,082.15.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. The Landlord collected a rent deposit of \$985.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
15. Interest on the rent deposit, in the amount of \$77.65 is owing to the Tenant for the period from November 1, 2017 to March 9, 2023.

L2 Application – Persistent Late Payment of Rent

16. 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 Monthly. The rent has been paid late 25 times since October 2020.

Relief from Eviction

17. 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.
18. Pursuant to section 83(6), I am required to consider whether the Landlord made attempts to negotiate a payment agreement with the Tenant. The Landlord stated that he contacted the Tenant several times regarding paying the late rent. When asked if any specific payment plans had been discussed, he said there were not. As such, I am not satisfied that the Landlord attempted to negotiate a payment agreement with the Tenant within the meaning of section 83(6).
19. With respect to section 83(2), the Landlord testified that since the service of the N8 Notice, the Tenant had been late every month thereafter. In addition, the Tenant's late payment of rent has resulted in the Landlord defaulting on his payments for the upkeep of the building.
20. The Tenant testified that the reason for his late payments was because in 2021, his mother unfortunately passed away. As such, he had to travel to his home country, Burundi. He lost his job due to the time spent in Burundi. Since 2021 until two weeks ago, he was unemployed and living off of EI. The Tenant states that he is able to pay the outstanding arrears the week following the hearing and if ordered to pay the rent in full and on time commencing May 1, 2023, he would be able to comply.

21. The Landlord disputed that the Tenant will be able to pay his rent in full and on time as he previously received an order for the Tenant's non- / late payment of rent but did not enforce it to give the Tenant another opportunity. Further, he does not believe the Tenant only got a job recently and had been employed since 2021.
22. In consideration of the foregoing, and that eviction is a remedy of last resort, I find that the Tenant should be afforded another opportunity to preserve the tenancy. As the Tenant states he found employment, it appears the Tenant would be able to comply with an order for arrears and to pay the rent in full and on time. However, I considered the prejudice to the Landlord in the persistent late payments. While the Tenant states he can begin paying the rent on time May 1, 2023, the Tenant will be required to pay the rent on time commencing April 1, 2023.

It is ordered that:

L1 Application – Non-Payment of Rent

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:** ○ **\$ 1,268.15** if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- **\$ 2,350.30** if the payment is made on or before April 1, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after April 1, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before April 1, 2023.**
5. If the Tenant does not void the order, the Tenant owes the Landlord \$1,607.87. This amount includes rent arrears owing up to the date of the hearing and the application filing fee. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.

- 6. The Tenant shall also pay the Landlord compensation of \$35.58 per day for the use of the unit starting March 10, 2023 until the date the Tenant moves out of the unit.
- 7. If the Tenant does not pay the Landlord the full amount owing on or before April 1, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 2, 2023 at 5.00% annually on the balance outstanding.
- 10. If the unit is not vacated on or before April 1, 2023, then starting April 2, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
- 11. 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 2, 2023.

L2 Application – Persistent Late Payment of Rent

- 12. If the Tenant voids the L1 portion of the order in accordance with paragraph two above, the tenancy shall continue on the following terms.
- 13. The Tenant shall pay the Landlord the monthly rent due on or before the first day of the month for the period **April 2023 to March 2024**.
- 14. If the Tenant fails to make any of the payments in paragraph 13 above, the Landlord may apply under section 78 of the Act, within 30 days of the breach and without notice to the Tenant, for an order terminating the tenancy and evicting the Tenant.

March 21, 2023 _____ **Date Issued**
 Camille Tancioco

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 of the Tenant expires on October 2, 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.

*Note: When the LTB directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

Schedule 1 SUMMARY OF CALCULATIONS

A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before March 31, 2023

Rent Owing To March 31, 2023	\$ 1,082.15
Application Filing Fee	\$ 186.00
NSF Charges	\$ 0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$ 0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$ 0.00
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$ 0.00
Less the amount of the credit that the Tenant is entitled to	- \$ 0.00
Total the Tenant must pay to continue the tenancy	\$ 1,268.15

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made after March 31, 2023 but on or before April 1, 2023

Rent Owing To April 1, 2023	\$2,164.30
Application Filing Fee	\$ 186.00
NSF Charges	\$ 0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$ 0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$ 0.00
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$ 0.00
Less the amount of the credit that the Tenant is entitled to	- \$ 0.00
Total the Tenant must pay to continue the tenancy	\$ 2,350.30

C. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$ 1,402.37
Application Filing Fee	\$ 186.00
NSF Charges	\$ 0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$ 0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$ 0.00
Less the amount of the last month's rent deposit	- \$ 985.00

Less the amount of the interest on the last month's rent deposit	- \$ 77.65
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$ 0.00
Less the amount of the credit that the Tenant is entitled to	- \$ 0.00
Total amount owing to the Landlord	\$ 1,607.87
Plus daily compensation owing for each day of occupation starting March 10, 2023:	\$ 35.58 (per day)