



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

Citation: MetCap Living Properties Inc. v Dixon, 2023 ONLTB 25704

Date: 2023-03-15

File Number: LTB-L-035245-22

In the matter of: 1411, 3434 EGLINTON AVE E
Toronto ON M1J2J1

Between: MetCap Living Properties Inc. Landlord

And

Carol Dixon Tenant

MetCap Living Properties Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Carol Dixon (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 1, 2023.

The Landlord did not attend the hearing but was represented by Michelle Forrester. The Tenant attended the hearing, was self-represented, and assisted by a support-person, David Smith.

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 \$1,310.11. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$43.07. This amount is calculated as follows: \$1,310.11 x 12, divided by 365 days.

5. The Tenant has paid \$9,948.00 to the Landlord since the application was filed.
6. The rent arrears owing to January 31, 2023 are \$1,787.35.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,235.85 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.
9. Interest on the rent deposit, in the amount of \$14.19 is owing to the Tenant for the period from January 1, 2022 to February 1, 2023.

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Section 83 considerations

10. The Tenant does not contest the arrears claimed by the Landlord. She explained that due to a temporary disability she was unable to work for a period of time which led to a loss of income and an inability to meet her rent payment obligations under the tenancy agreement.
11. The Tenant testified that she returned to the workplace in and around June 2022/July 2022 and continues to be gainfully employed earning sufficient income to meet her rent payment obligations under the tenancy agreement, and to make payments towards the arrears. She proposed the following: (i) monthly arrears payments made on the 20th day of each month valued at \$198.00; and, (ii) rent payments made on the 1st day of the month.
12. In response to questions posed by the Board pertaining to the impact an eviction would have, the Tenant explained that she would be unable to find another place to live given current market rent values. Furthermore, in the past she lived in the unit for over five years without any issues until she had temporary health problems to which she has overcome, placing her back in a position to fulfil her obligations under the tenancy agreement as she had previously.
13. The Landlord's legal representative did not contest the Tenant's proposed payment plan.

Analysis

14. 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 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.

15. I am satisfied that the Tenant fell into arrears after acquiring a temporary disability. I am also satisfied that, given the Tenant's income, the tenancy remains viable. I acknowledge the prejudice the Landlord has experienced however, conclude that preserving the tenancy subject to this order is fair in the circumstances.

It is ordered that:

1. The Tenant shall pay to the Landlord \$1,973.35, which represents the arrears of rent (\$1,787.35) and costs (\$186.00) outstanding for the period ending January 31, 2023.
2. The Landlord's application for eviction of the Tenant is denied on the condition that:
 - (a) The Tenant shall make the following payments to the Landlord in respect of the monies owing under paragraph 1 of this order:

Payment	Due Date
\$198.00	March 20, 2023
\$198.00	April 20, 2023
\$198.00	May 20, 2023
\$198.00	June 20, 2023

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\$198.00	July 20, 2023
\$198.00	August 20, 2023
\$198.00	September 20, 2023
\$198.00	October 20, 2023
\$198.00	November 20, 2023
\$191.35	December 20, 2023

- (b) The Tenant shall pay the lawful monthly rent for February 2023 and March 2023 on or before March 31, 2023, if not already paid;
 - (c) The Tenant shall also pay the Landlord the lawful monthly rent as it becomes due on or before the 1st day of the month starting April 1, 2023 until the arrears are paid in full.
3. If the Tenant fails to make any of the payments in accordance with paragraph 2, and by the dates required, then:
 - (a) The Landlord may apply, without notice to the Tenant, under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant, and for the payment of any new arrears of rent and NSF charges not already ordered under paragraph 1 of this order.

The Landlord must make the application within 30 days of a breach of a condition set out in paragraph 2 of this order.

- (b) The balance owing under paragraph 1 of this order shall become payable on the day following the date of default. The monies shall bear interest at the post-judgement interest rate determined under subsection 207(7) of the Act.

March 15, 2023

Date Issued
Ramlochan

Emile

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.