



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

Citation: Henkel v Wright, 2023 ONLTB 23835

Date: 2023-03-08 **File Numbers:** LTB-L-036736-22, LTB-L-028346-22, LTB-L-039675-22

In the matter of: 614, 1050 MAIN ST E MILTON
ON L9T9M3

Between: Kathy Henkel and Peter Henkel

Landlords

And

Jessica Wright

Tenant

Kathy Henkel and Peter Henkel (the 'Landlords') applied for an order to terminate the tenancy and evict Jessica Wright (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (Application LTB-L-036736-22).

The Landlords 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 (Application LTB-L-028346-22).

The Landlords also applied for an order requiring the Tenant to pay the Landlords reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement (Application LTB-L-039675-22).

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

The Landlords, the Landlords' Legal Representative, Bill Burd, and the Tenant attended the hearing.

Determinations:

Application LTB-L-036736-22

File Numbers: LTB-L-036736-22, LTB-L-028346-22, LTB-L-039675-22

1. The Landlords served the Tenant with a valid Notice to End Tenancy Early for Nonpayment 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 \$1,973.40. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$64.88. This amount is calculated as follows: \$1,973.40 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to February 28, 2023, are \$17,760.60.
7. The Landlords incurred costs of \$186.00 for filing the application and are entitled to reimbursement of those costs.
8. The Landlords collected a rent deposit of \$1,950.00 from the Tenant and this deposit is still being held by the Landlords. 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 \$59.73 is owing to the Tenant for the period from June 1, 2021 to February 27, 2023.
10. During the hearing, the Tenant stated that she would be leaving the rental unit on or before March 15, 2023, and the Tenant confirmed that the tenancy would end on that date. Due to the amount of money owing in this matter, the Landlords' Legal Representative did not object to the Tenant ending the tenancy.
11. Since the Tenant requested a final, non-voidable termination date of March 15, 2023. The application is amended to include an L3 application for termination of the tenancy. As a consequence, the Tenant does not have the option to void the eviction order under subsections 74(4) or 74(11) of the *Residential Tenancies Act, 2006* (the 'Act') by paying the outstanding rent arrears.

Application LTB-L-028346-22

12. On May 17, 2022, the Landlords gave the Tenant an N8 notice of termination. The notice of termination contains the allegation that the Tenant has persistently failed to pay the rent on the date it was due.
13. However, since the tenancy is ending as of March 15, 2023, this application has become redundant and is no longer needed.

Application LTB-L-039675-22

File Numbers: LTB-L-036736-22, LTB-L-028346-22, LTB-L-039675-22

14. The Tenant failed to pay water and electricity costs that they were required to pay under the terms of the tenancy agreement.
15. The Landlord has incurred or will incur reasonable out-of-pocket expenses of \$1,103.74 which is a result of the Tenant's failure to pay the water and electricity costs to Wyse Utilities. This amount represents the amount the Tenant currently owes up to January 1, 2023.

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated. **The Tenant must move out of the rental unit on or before March 15, 2023.**
2. The Tenant shall pay to the Landlords **\$15,715.23**. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlords owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
3. The Tenant shall also pay the Landlords compensation of **\$64.88** per day for the use of the unit starting February 28, 2023, until the date the Tenant moves out of the unit.
4. The Tenant shall also pay the Landlords **\$1,103.74**, which represents the reasonable outof-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs up to January 1, 2023.
5. The Tenant shall also pay to the Landlords **\$372.00**, which represents the costs of filing Application LTB-L-028346-22 and Application LTB-L-039675-22. (The cost of filing Application LTB-L-036736-22 is already included in paragraph 2 above.)
6. If the Tenant does not pay the Landlords the full amount owing on or before March 15, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 16, 2023, at 5.00% annually on the balance outstanding.
7. If the unit is not vacated on or before March 15, 2023, then starting March 16, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after March 16, 2023.

March 8, 2023

Date Issued

Michael Di Salle

Member, Landlord and Tenant Board

File Numbers: LTB-L-036736-22, LTB-L-028346-22, LTB-L-039675-22

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 September 16, 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay as the tenancy is terminated

Rent Owing To Hearing Date	\$17,538.96
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	- \$1,950.00
Less the amount of the interest on the last month's rent deposit	- \$59.73
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	\$15,715.23
Plus daily compensation owing for each day of occupation starting February 28, 2023	\$64.88 (per day)

2023 ONL TB 23835 (CanLII)