



## Order under Section 87 Residential Tenancies Act, 2006

**Citation:** Wallace Property Management Inc. v Dionne, 2023 ONLTB 19972

**Date:** 2023-02-22

**File Number:** LTB-L-035797-22

**In the matter of:** 208, 780 WALLACE ST  
WALLACEBURG ON N8A1M6

**Between:** Wallace Property Management Inc. Landlord

**And**

Chase Dionne Tenants  
Hannah Dionne

Wallace Property Management Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Chase Dionne and Hannah Dionne (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on February 2, 2023. The Landlord's agent, Tais Jacques, and the Tenants attended the hearing.

**Determinations:**

1. The Landlord served the Tenants with a Notice to End the Tenancy Early for Non-payment 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.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$925.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$30.41. This amount is calculated as follows: \$925.00 x 12, divided by 365 days.
5. The Tenants have paid \$5,610.00 to the Landlord since the application was filed.
6. The Landlord incurred costs of \$186.00 for filing the application.
7. The Landlord collected a rent deposit of \$925.00 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.
8. Interest on the rent deposit, in the amount of \$23.25 is owing to the Tenant for the period from February 1, 2022 to February 2, 2023.

### Landlord's Evidence

9. The Landlord's agent testified that the rent arrears owing to February 28, 2023 are \$1,109.11. The agent stated that as of the date of the hearing the Landlord has not received the Tenants' rent payment for February 2023; however, when this payment is received it will be applied to the rent arrears owing. The Landlord submitted a rent ledger to the Board covering the period of January 26, 2022 to January 3, 2023.
10. The agent stated further that the Landlord seeks reimbursement for the cost of filing the L1 application.
11. The Landlord's agent testified that the Landlord sent letters to the Tenants in July 2022 and in October 2022 offering the Tenants an arrears repayment plan; however, the Tenants never responded to these offers.

### Tenant's Evidence

12. The Tenants testified that they agreed that arrears are owed to the Landlord, but the total of \$1109.11 does not include a very recent rent payment made by the Tenants. The Tenants explained that the rent arrears they accrued were the result of their move into the unit on February 18, 2022, 11 days before the lease start date of March 1, 2022. The Tenants asserted that they were not aware that they were liable to pay rent for the period of February 18 to 28, 2022, given that their tenancy agreement (lease) was not provided to them until five months after their move-in date. The Tenants stated that it was not until January 25, 2023 that they became aware of the requirement to pay rent for the period of February 18 to 28, 2022.
13. The Tenants noted that they want to retain the tenancy, and agreed to pay the rent arrears and the on-going rent. The Tenants testified further that they have no personal circumstances that needed to be considered with respect to a determination of the status of their tenancy. The Tenants remarked that they should not be ordered to compensate the Landlord \$186.00 for the cost of the application fee given that their failure to pay the arrears was the result of the Landlord's failure to provide them with a copy of the tenancy agreement in a timely manner.

### Analysis

14. On the basis of the evidence provided, I find that as of the date of the hearing the Tenants owe the Landlord \$1,109.11 in rent arrears for the period of the tenancy from February 19, 2022 to February 28, 2023.
15. On the basis of the evidence provided, particularly the rent ledger submitted by the Landlord, I am satisfied that the Tenants paid the Landlord \$925.00 on February 16, 2022 for rent for the month of March 2022, but failed to pay the Landlord rent of \$304.11 charged to the Tenants for their occupancy of the unit for the 10-day period from February 19 to 28, 2022.

Validity of the N4 Notice

16. The Landlord's N4 Notice lists rent arrears of \$304.11 owing for the period of March 1 to 31, 2022. However, as provided in paragraph 15 above, these arrears are owed for the period of February 19 to 28, 2022. It is not clear or evident from the N4 that the Tenants owed rent for the period of February 19 to 28, 2022.
17. As a result of this omission, the Landlord's N4 does not set out the correct details respecting the termination of the tenancy, and therefore does not comply with s. 43(2) of the *Residential Tenancies Act, 2006* (the 'Act'). Accordingly, I find that the N4 is defective, and I am unable to consider a termination of the tenancy pursuant to s. 69(1) of the Act.
18. The Landlord's L1 application may however be considered for rent arrears only, pursuant to s. 87(1) of the Act. Given the agreement from both parties that rent arrears are owed, and the Tenants' commitment to pay these arrears, the Landlord's L1 application is amended for rent arrears only.

Application Fee Compensation

19. The Landlord has proven that rent arrears are owed by the Tenants; however, the Landlord has not proven the merits for a termination of the tenancy. I therefore find that the Landlord has not been successful in obtaining an order that provides the relief asked for, or substantially all of that relief, as requested in the Landlord's initial L1 application. For this reason, the Landlord's request for compensation of \$186.00 for the cost of the application fee is denied.

**It is ordered that:**

1. On or before March 15, 2023, the Tenants shall pay to the Landlord \$1,109.11, representing rent arrears owing as of the date of this hearing.
2. If the Tenants do not pay the Landlord the full amount owing on or before March 15, 2023, the Tenants will start to owe interest. This will be simple interest calculated from March 16, 2023 at 5.00% annually on the balance outstanding.

**February 22, 2023****Date Issued**\_\_\_\_\_  
Frank Ebner

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor  
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.