



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

Citation: D'Innocenzo v Fazari, 2023 ONLTB 20610

Date: 2023-02-21

File Number: LTB-L-033233-22

In the matter of: Basement, 66 Ondrey Street
Bradford, Simcoe County ON L3Z2X1

Between: Barbara D'Innocenzo Landlord

And

April Fazari Tenant

Barbara D'Innocenzo (the 'Landlord') applied for an order to terminate the tenancy and evict April Fazari (the 'Tenant') because:

- the Tenant has been persistently late in paying the Tenant's rent.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on February 8, 2023.

Only the Landlord Barbara D'Innocenzo attended the hearing.

As of 10:23 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. Since the Tenant did not attend and the Landlord was prepared to proceed, the matter proceeded by way of an uncontested hearing pursuant to section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990.

Determinations:

1. The Tenant was in possession of the rental unit on the date the application was filed.
2. On March 16, 2022, the Landlord gave the Tenant an N8 notice of termination. It was deemed served that same date. The notice of termination contained a rent ledger from 2017 until January 2022. Many of the entries prior to 2021 do not include the dates payments were made by the Tenant to the Landlord. For this reason, I only considered the allegations on the N8 Notice from January 2021 until January 2022 as I found these entries clearly set out to the Tenant the claim being made.
3. The N8 Notice for the period January 2021 until January 2022 alleges the Tenant paid the monthly rent late in January, February, March, May, July, August, September, October, November and December of 2021. Additionally, the N8 claims the monthly rent for January

2022 was paid late. This amounts to late payments in eleven of thirteen months. The Landlord's documents and submissions supported the allegations made on the N8 Notice.

4. I accept the uncontested testimony and evidence of the Landlord and am satisfied, on a balance of probabilities, that the Tenant has persistently failed to pay the rent on the date it was due.

Section 83 Considerations

5. The Landlord's evidence was since serving the N8 application the Tenant continues to pay the monthly rent late. The Landlord testified she does receive more than half the monthly rent from the county on behalf of the Tenant. The monthly rent for May 2022 was also paid in full. I asked the Landlord if she had been before the Board for the same issue with this tenancy and she stated she had not been.
6. The Landlord sought an eviction of the Tenant and I asked the Landlord if she was aware of any circumstances the Tenant may be experiencing that would make an eviction unfair to the Tenant and she was aware of none.
7. Termination of a tenancy is a remedy of last resort. While the Landlord is no doubt entitled to the monthly rent on time and in full, I also find it would be fair to give the Tenant an opportunity to maintain the tenancy with a conditional order requiring the Tenant to pay the monthly rent on time and in full for a period of twelve months commencing March 1, 2023. Given the Landlord receives a significant portion of the monthly rent from a reliable source I find it reasonable to expect the Tenant to pay the remaining amount on time each month. I also take into consideration this tenancy has not been before the Board on this same issue in the past.
8. 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. A pay on time order will issue.
9. The Landlord has incurred the cost of \$201.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The Tenant shall pay to the Landlord the lawful monthly rent in full on or before the first day of each month, commencing March 1, 2023 and for 12 months thereafter up to and including February 1, 2024.
2. If the Tenant fails to comply with the conditions set out in paragraph 1 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
3. The Tenant shall pay to the Landlord \$201.00 for the cost of filing the application.

4. If the Tenant does not pay the Landlord the full amount owing on or before March 4, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 5, 2023 at 5.00% annually on the balance outstanding.

February 21, 2023
Date Issued

John Cashmore
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.