



Order under Section 69
Residential Tenancies Act, 2006

File Number: LTB-L-015273-22

In the matter of: 202, 531 MILL ST WINDSOR
ON N9C2R7

Between: UCRez Property Management Landlord

And

Filip Zuk Tenant

UCRez Property Management (the 'Landlord') applied for an order to terminate the tenancy and evict Filip Zuk (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 January 26, 2023.

The Landlord's Representative Trevor Scheib 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 \$875.00. It is due on the 1 day of each Monthly.

4. Based on the Monthly rent, the daily rent/compensation is \$28.77. This amount is calculated as follows: \$875.00 x 12, divided by 365 days.
5. The Landlord submits that the Tenant has paid \$8,500.00 since the application was filed. The Tenant submits that they have paid their rent in entirety and there are no outstanding arrears.
6. The party bringing an application always carries the ultimate burden of proving their application on a balance of probabilities. However, once a landlord provides evidence that rent was not paid, the onus shifts to the Tenant to positively establish that the rent was in fact paid.
7. For three reasons I find on a balance of probabilities that the Tenant has paid \$8,500.00 to the Landlord since the application was filed. First, the Tenant did not introduce into evidence any banking records that established that they have made payments beyond what was credited to them by the Landlord. The Tenant testified that they could acquire those records, however they had not been filed by the date of the hearing and therefore they were not before me to consider. Second, the Landlord has credited the Tenant with making some payments and the Tenant did not establish why the Landlord would be receiving some of their payments but not others. Third, I find the Landlord's rent chart to be reliable and persuasive.
10. The rent arrears owing to January 31, 2023 are \$2,875.00.
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 \$850.00 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 \$11.71 is owing to the Tenant for the period from January 31, 2021 to January 26, 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 1st day of each Monthly. The rent has been paid late 14 times in the past 15 months. Specifically, the Tenant paid rent:
 1. Partially in November 2021
 2. Partially on December 2, 2021 and December 7, 2021
 3. Unpaid in January 2022
 4. Unpaid in February 2022

5. Partially on March 31, 2022
6. Partial rent payments and some arrears payment on April 5, 2022 and April 28, 2022
7. Unpaid in May 2022
8. Partial payments on June 7, 2022 June 16, 2022
9. Unpaid in July 2022
10. Unpaid in August 2022
11. On time September 2022
12. Partial payment on October 13, 2022
13. Partial payment on November 3, 2022
14. Partial payment on December 4, 2022
15. Partial payment on January 3, 2023

17. I make the factual findings regarding when rent was paid based upon the Landlord's list of received rent payments. The Tenant did not contest that they have been paying their rent late.

Relief from Eviction

18. Regarding the L1 application the Tenant testified that they could pay off the outstanding arrears immediately, but disagreed that they owe the money. The tenancy will be terminated unless the Tenant voids this order by paying \$3,936.00 to the Landlord on or before February 25, 2023.
19. Regarding the L2 application the Landlord is opposed to a conditional pay on time order because of the number of times that the Tenant has paid their rent late. The Landlord directed my attention to a Board decision in which 4 consistent months of late payment were considered persistently late.
20. 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.
21. In making that determination I have considered the Landlord's caselaw and also their submissions that the Landlord relies on timely payment to manage their expenses. However, I have also considered the Tenant's testimony that he has had a full-time job for the last 7 months ago and his financial situation has improved. I also note that Tenant has consistently paid almost the entirety of their rent since September 2022. The lateness of the payments is also decreasing. The Tenant made a rent payment on November 3, 2022, December 4, 2022, and January 3, 2023. Those payments were paid earlier in the month than some of their previous late payments.

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:**
 - o \$3,936.00 if the payment is made on or before February 25, 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 February 25, 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 February 25, 2023.**
5. If the Tenant does not void the order, the Tenant owes the Landlord \$2,072.31. This amount includes rent arrears owing up to the date of the hearing and the Landlord's 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 \$28.77 per day for the use of the unit starting January 27, 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 February 25, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 26, 2023 at 5.00% annually on the balance outstanding.
10. If the unit is not vacated on or before February 25, 2023, then starting February 26, 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 February 26, 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 March 2023 to February 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.

February 14, 2023

Date Issued

Amanda Kovats

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 August 26, 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 to void the eviction order and continue the tenancy if the payment is made after but on or before February 25, 2023

Rent Owing To February 28, 2023	\$12,250.00
Application Filing Fee	\$ 186.00
NSF Charges	\$ 0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$ 8,500.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$ 0.00
Total the Tenant must pay to continue the tenancy	\$3,936.00

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

Rent Owing To Hearing Date	\$11,248.02
Application Filing Fee	\$ 186.00
NSF Charges	\$ 0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$ 8,500.00

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	- \$850.00
Less the amount of the interest on the last month's rent deposit	- \$11.71
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	\$2,072.31
Plus daily compensation owing for each day of occupation starting January 27, 2023	\$ 28.77 (per day)