



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

Citation: 1477 Birchmount Ltd. v Lowe, 2023 ONLTB 16183

Date: 2023-02-13

File Number: LTB-L-027272-22

In the matter of: 302, 1477 BIRCHMOUNT RD
SCARBOROUGH ON M1P2G4

Between: 1477 Birchmount Ltd. Landlord

And

Ishmael Lowe Tenants Shanese Richards

1477 Birchmount Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Ishmael Lowe and Shanese Richards (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

This application was heard by videoconference on January 17, 2023.

The Landlord's Representative Elizabeth Chea and the Tenant, Ishmael Lowe attended the hearing.

Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment 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, only the Tenant Ishamael was still in possession of the rental unit. The Tenant informed the Landlord through the Landlord's portal on October 4, 2022 that SR vacated the rental unit.
3. The lawful rent is \$2,393.38. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$78.69. This amount is calculated as follows: \$2,393.38 x 12, divided by 365 days.

5. The Tenants has paid \$18,839.85 to the Landlord since the application was filed.
6. The rent arrears owing to January 31, 2023 are \$2,730.43.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

File Number: LTB-L-027272-22

8. The Landlord collected a rent deposit of \$2,440.00 from the Tenants 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 \$75.24 is owing to the Tenants for the period from April 18, 2021 to January 17, 2023.
10. 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. The Landlord agreed to the Tenant's proposed payment plan. The Tenant has extra time to make February payments because of the date of this order.

It is ordered that:

1. The Tenant shall pay to the Landlord \$2,916.43, which represents the arrears of rent (\$2,730.43) 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:

Date Payment Due	Amount of Payment
February 17, 2023	\$200.00 (costs and arrears)
March 1, 2023	\$200.00 (arrears)
April 1, 2023	\$200.00 (arrears)
May 30, 2023	\$2,316.43 (balance of arrears)

- (b) The Tenant shall pay the Landlord the rent for the month of February 2023 in full, on or before February 17, 2023; and
- (c) The Tenant shall also pay the Landlord the rent for the month of March 1, 2023 to and including May 1, 2023 in full, on or before the first day of each corresponding month.
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 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.

File Number: LTB-L-027272-22

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

February 13, 2023

Date Issued

Sandra Macchione

Member, Landlord and Tenants 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.