



**Order under Section 69 and 87(1)
Residential Tenancies Act, 2006**

Citation: Bouthillette v Way, 2023 ONLTB 19354

Date: 2023-02-08

File Number: LTB-L-036114-22

In the matter of: Upper, 429 Oastler Park Drive
Seguin ON P2A2W8

Between: Julie Bouthillette Landlord

And

Kevin Way Tenant

Julie Bouthillette (the 'Landlord') applied for an order to terminate the tenancy and evict Kevin Way (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 2, 2023. Only the Landlord attended the hearing. As of 1:32pm, 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. As a result, the hearing proceeded with only the Landlord's evidence.

The application is amended to include that the Tenant's rental unit is in the Upper unit of the rental premises.

Determinations:

1. The Landlord served the Tenant with a 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. The N4 notice was defective in that it did not include the rental unit on it as required pursuant to subsection 43(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act'). On this basis, the Landlord requested to amend their application for arrears of rent only because the Landlord and Tenant had agreed to terminate the tenancy effective on January 23, 2023. I see no reason to deny the Landlords request to amend.
3. The Tenant was in possession of the rental unit on the date the application was filed.
4. The Landlord and Tenant agreed that the Landlord would reduce the living space for the Tenant by taking back possession of the kitchen, bathroom and additional bedroom from the rental unit. The parties then agreed that this new agreement would start on January 24, 2023 for a reduced rent amount.

5. Because of the agreement, the Landlord and Tenant now share a kitchen and bathroom and the new rental unit is exempt from section 5(j) of the Act which reads as follows:

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5(i) living accommodation whose occupant or occupants are required to share a bathroom or kitchen facility with the owner, the owner's spouse, child or parent or the spouse's child or parent, and where the owner, spouse, child or parent lives in the building in which the living accommodation is located.

6. Therefore, the Board is restricted to ordering only the rent arrears that were due up to January 23, 2023 when the rental unit was subject to the Act.
7. According to the Landlord, the lawful rent was actually \$1,420.00. However, the Landlord only indicated in their application that the rent was \$1,400.00 per month. Accordingly, the Landlord is only entitled to claim the lesser amount.
8. The Tenant has not made any payments since the application was filed towards this tenancy.
9. The rent arrears owing to January 23, 2023 are \$10,858.69.
10. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. The Landlord collected a rent deposit of \$1,400.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
12. Interest on the rent deposit, in the amount of \$25.81 is owing to the Tenant for the period from November 1, 2021 to January 23, 2023.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of January 23, 2023, the date the parties agreed to terminate the tenancy.
2. The Tenant shall pay to the Landlord \$9,618.88. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
3. If the Tenant does not pay the Landlord the full amount owing on or before February 19, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 20, 2023 at 5.00% annually on the balance outstanding.

February 8, 2023

Date Issued

Terri van Huisstede
Member, Landlord and Tenant Board

15 Grosvenor St, 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.

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**Schedule 1
SUMMARY OF CALCULATIONS**

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

Rent Owing To January 23, 2023	\$10,858.69
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	- \$1,400.00
Less the amount of the interest on the last month's rent deposit	- \$25.81
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	\$9,618.88

