



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

Citation: The Effort Trust Company v MacKenzie, 2023 ONLTB 18508

Date: 2023-02-07

File Number: LTB-L-028574-22

In the matter of: 7, 59 RIVER RD
WELLAND ON L3B2R7

Between: The Effort Trust Company Landlord

And

Ryan MacKenzie and Steven MacKenzie Tenants

The Effort Trust Company (the 'Landlord') applied for an order to terminate the tenancy and evict Ryan MacKenzie and Steven MacKenzie (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 18, 2023.

The Landlord's Legal Representative, Kimberley Holleran, Steven MacKenzie, for himself, and Hale MacKenzie on behalf of Ryan MacKenzie, attended the hearing

Determinations:

Preliminary Issue

1. Steven MacKenzie(SM) raised as a preliminary issue that he is not a Tenant and should be removed from the hearing paperwork. He is unsure why he is listed as a Tenant as he never moved into the rental unit; he was going to move in with his brother Ryan MacKenzie (RM), but they ended up with only a one-bedroom, so he never did.
2. The Landlord's Legal Representative testified that both SM and RM signed as Tenants on the list. SM did not contact the Landlord until recently, approximately two-months ago, to advise that he was not in the unit.
3. For the reasons that follow, I find SM is properly listed as a Tenant on the hearing paperwork. SM did not dispute the Landlord's Legal Representative's testimony about signing the lease and not contacting the Landlord until recently. Therefore, from the signing of the lease, in 2017, the Landlord was unaware SM was not in the unit until well after the paperwork was filed. As the unit has not been occupied since December 19, 2022, this application is proceeding as a L9 application for money owing only. As such, any issue related to service of the N4 notice of termination is not applicable to this application proceeding as termination in a non-issue.

Merits

4. The Tenants have not paid the total rent the Tenants were required to pay for the period from April 1, 2022 to April 30, 2022. Because of the arrears the Landlord served a Notice of Termination effective April 11, 2022.
5. The Tenants were in possession of the rental unit on the date the application was filed.
6. The Tenants vacated the rental unit on December 19, 2022. Rent arrears are calculated up to the date the Tenant vacated the unit.
7. The lawful rent is \$745.00. It was due on the 1st day of each month.
8. The Tenant has paid \$3,000.00 to the Landlord since the application was filed.
9. The rent arrears owing to December 19, 2022 are \$3,433.07.
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 \$699.00 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 \$38.88 is owing to the Tenant for the period from September 1, 2018 to December 19, 2022.
13. The Landlord's Legal Representative advised that the Tenants could contact the Landlord with respect to a payment plan for the arrears owing.
14. This order contains all the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated as of December 19, 2022, the date the Tenants moved out of the rental unit
2. The Tenants shall pay to the Landlord \$2,881.19. This amount includes rent arrears owing up to the date the Tenants 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 Tenants. See Schedule 1 for the calculation of the amount owing.
3. If the Tenants do not pay the Landlord the full amount owing on or before February 18, 2023, the Tenants will start to owe interest. This will be simple interest calculated from February 19, 2023, at 5.00% annually on the balance outstanding.

February 7, 2023
Date Issued

Diane Wade
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.

**Schedule 1
SUMMARY OF CALCULATIONS**

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

Rent Owing To Move Out Date	\$6,433.07
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,000.00
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	- \$699.00
Less the amount of the interest on the last month's rent deposit	- \$38.88
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	\$2,881.19