



Order under Section 69
Residential Tenancies Act, 2006

Citation: 1001235 Ontario Ltd v Kirkeby, 2023 ONLTB 17935

Date: 2023-02-06

File Number: LTB-L-015511-22

In the matter of: 204, 95 KING ST N
WATERLOO ON N2J2X3

Between: 1001235 Ontario Ltd Landlord

And

Samantha Kirkeby

1001235 Ontario Ltd (the 'Landlord') applied for an order to terminate the tenancy and evict Samantha Kirkeby (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 January 25, 2023.

The Landlord, George Hannoush and the Landlord's Property Manager, Paul Hannoush attended the hearing.

The Tenant attended the hearing and spoke to Tenant Duty Counsel prior to the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy in the application. Therefore, I will be issuing a conditional order that the Tenant must pay their rent in full and on time for the next twelve months.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N8 Notice of Termination

3. On March 15, 2022, the Landlord gave the Tenant an N8 notice of termination. The notice of termination contains the following allegation that the Tenant has been persistently late paying the rent.
4. 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 month. The rent has been paid late six times for the period of April 1, 2021 to March 1, 2022.

File Number: LTB-L-015511-22

5. The Tenant did not pay the lawful monthly rent due on the 1st day of the month for the following periods:
 - a) April 2021, partial rent was paid on April 1, 2021 and the remainder sometime mid April, 2021
 - b) November, 2021, partial rent payment on November 2nd and additional payment on November 17, 2021.
 - c) December, 2021, partial rent payment made on December 1, 2021 and the remainder sometime mid December, 2021
 - d) January 2022, partial rent payment made on January 1, 2022 and the remainder sometime mid January 2022.
 - e) February 2022, partial payment made on February 1, 2022 and the remainder sometime mid February 2022.
 - f) March 1, 2022, partial payment made on March 16, 2022.
6. The Landlord testified that when the Tenant does not pay the rent on time it causes him financial stress.
7. He testified that since the termination date on the N8 Notice of Termination, being May 31, 2022, the Tenant has failed to pay the rent on time eight times.
8. The Tenant did not dispute that she has been persistently late paying his rent.

Relief from eviction

9. 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 pursuant to subsection 83(1)(a) of the Act.
10. The Tenant is self employed and works from home and she has been dealing with depression and due to this is not able to work some days.
11. The Tenant was in a car accident in December 2022 and as a result could not work. She is awaiting the insurance company to pay for loss of income during the time she was off work after the accident.

12. The Tenant has been taking physiotherapy after the car accident and is hoping to return to work soon and states she will be able to pay her rent on time
13. The Tenant resides at the rental unit with her 10-year-old son and fears if evicted they will have no place to go.
14. I find that the Tenant should have sufficient funds to pay her rent in the future as she plans to go back to work. Therefore, it would not be unfair to give the Tenant a chance to continue the tenancy on the condition that rent is paid in full and on time for the next 12 months.

File Number: LTB-L-015511-22

It is ordered that:

1. The tenancy between the Landlord and the Tenant shall continue on the condition that:
 - a) The Tenant pays the lawful monthly rent to the Landlord in full, on or before the first day of each month, commencing March 1, 2023 to February 28, 2024.
2. If the Tenant fails to comply with the condition set out in paragraph 1(a) 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 Board without notice to the Tenant.
3. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlord the full amount owing on or February 20, 2023, the Tenant shall start to owe interest. This will be simple interest calculated from February 21, 2023 at 5.00% annually on the balance outstanding.

February 6, 2023

Date Issued

Trish Carson

Member, 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 18, 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.