



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

**Citation:** Ganesharajah v Deleavey, 2023 ONLTB 16054

**Date:** 2023-01-18

**File Number:** LTB-L-011756-22

**In the matter of:** Unit #2, 4553 FERGUSON ST  
NIAGARA FALLS ON L2E2Y7

**Between:** Gowreeshan Ganesharajah Landlord

**And**

Calvin Deleavey Tenant

Gowreeshan Ganesharajah (the 'Landlord') applied for an order to terminate the tenancy and evict Calvin Deleavey (the 'Tenant') because the Tenant has been persistently late in paying the Tenant's rent.

This application was heard by videoconference on January 10, 2023.

Only the Landlord attended the hearing.

As of 10:42a.m., 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.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated as of January 29, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On February 9, 2022, the Landlord gave the Tenant an N8 notice of termination deemed served on February 14, 2022. The notice of termination alleges that the Tenant has been persistently late in paying rent.
4. The Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the 1<sup>st</sup> day of each month. Based upon the testimony and payment ledger provided by the Landlord, the rent has been paid late 17 times in the past 17 months. The rent is often paid in multiple installments throughout the month and is often not completely paid until the end of the month.
5. The Landlord testified that he has reminded the Tenant about missing and late rent payments on more than 10 occasions.
6. 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 be unfair to grant

relief from eviction pursuant to subsection 83(1) of the Act. In making that determination I considered the Landlord's testimony that the affect of the Tenant's late payments is that he is struggling to keep up with his mortgage payments. I did not preserve the tenancy in accordance with a pay on time order as the Tenant is also in arrears and has paid their rent late every month for 17 months straight. I am not satisfied that the Tenant would abide by a pay on time order. Additionally, the Tenant did not attend the hearing to provide any evidence relevant to my analysis.

7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$940.00 from the Tenant and this deposit is still being held by the Landlord. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy. Interest on the rent deposit, in the amount of \$10.10 is owing to the Tenant for the period from March 1, 2022 to January 10, 2023.
9. The Landlord testified that the Tenant is currently in \$5,450.00 of arrears. As the Landlord did not apply for daily compensation in the application, no request to amend the application was made, and the Tenant was not present at the hearing to consent to such a request and had no notice of such a request, daily compensation will not be awarded.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before January 29, 2023.
2. If the unit is not vacated on or before January 29, 2023, then starting January 30, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. 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 January 30, 2023.
4. The Landlord is to apply the Tenant's last month's rent deposit and interest on that deposit in accordance with the Act.
5. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
6. If the Tenant does not pay the Landlord the full amount owing on or before January 29, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 30, 2023 at 5.00% annually on the balance outstanding.

**January 18, 2023**  
**Date Issued**

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 Amanda Kovats  
 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 July 30, 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.