



## Order under Section 77 Residential Tenancies Act, 2006

**Citation:** FINORA v KIRKNESS, 2023 ONLTB 14331

**Date:** 2023-01-12

**File Number:** LTB-L-074251-22

**In the matter of:** 35, 17 SIMCOE STREET  
ST. CATHERINES ONTARIO L2N5C6

**Between:** DAN FINORA Landlord

**And**

CAMERON KIRKNESS Tenant

On December 2, 2022, DAN FINORA (the 'Landlord') applied for an order to terminate the tenancy and evict CAMERON KIRKNESS (the 'Tenant').

This application was considered without a hearing being held.

### Determinations:

1. The Tenant gave the Landlord signed written notice to terminate the Tenant's tenancy effective November 30, 2022, the said notice being dated October 11, 2022.
2. While the notice may have been defective as it was given on less than 60 days notice, contrary to section 44 of the *Residential Tenancies Act, 2006*, I find that the notice was an offer to terminate the tenancy by the Tenant. Furthermore, the Landlord has by submitting this application within a reasonable time following receipt of the notice affirmed by conduct that it has accepted the Tenant's notice and the Landlord and the Tenant thereby agreed to end the tenancy on November 30, 2022, converting the potentially defective notice to an agreement to terminate and therefore rendering moot any defect or defects in the notice.
3. Since the Tenant did not move out of the rental unit by the termination date, the Landlord was required to file the application to obtain vacant possession. Therefore, the Tenant is responsible for paying the Landlord for the \$201.00 application filing fee incurred.

### It is ordered that:

1. The tenancy between the Landlord and Tenant is terminated. The Tenant must move out of the rental unit on or before January 23, 2023.
2. If the unit is not vacated on or before January 23, 2023, then starting January 24, 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 24, 2023.
4. The Tenant has not been ordered to pay the Landlord's filing fee because this application was filed before the termination date. Therefore, the Tenant has not breached the Act.
5. If the Tenant does not pay the Landlord the full amount owing on or before January 23, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 24, 2023, at 5.00% annually on the balance outstanding.

**January 12, 2023**  
**Date Issued**

**Kimberly Parish**  
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.

The tenant has until January 22, 2023, to file a motion with the LTB to set aside the order under s.77(6) of the Act. If the tenant files the motion by January 22, 2023, the order will be stayed and the LTB will schedule a hearing.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on July 24, 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.