



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

Citation: Niagara Falls Masonry v Weberer, 2022 ONLTB 12237

Date: 2022-12-01

File Number: LTB-L-023438-22

In the matter of: 705, 26 MILL ST
WELLAND ON L3C4Y2

Between: Niagara Falls Masonry Landlord

And

Andrew Weberer Tenants
Debbie Weberer

Niagara Falls Masonry (the 'Landlord') applied for an order to terminate the tenancy and evict Andrew Weberer and Debbie Weberer (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on November 10, 2022. The Landlord's representative, Judith Callender, attended the hearing. As of 3:53 pm, the Tenants were 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. The Landlord served the Tenants with a valid Notice to End the Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants did not void the notice by paying the amount of rent arrears owing by the termination date of April 24, 2022 in the N4 Notice, or before the date the application was filed on April 25, 2022.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$868.78. It is due on the 1st day of each month.
4. Based on the monthly rent, the daily rent/compensation is \$28.56. This amount is calculated as follows: \$868.78 x 12, divided by 365 days.
5. The Landlord's representative submitted that the Tenants have paid \$6,950.24 to the Landlord since the application was filed, and on November 3, 2022 the Tenants made sufficient payments to the Landlord to pay for all the rent that is in arrears under the tenancy agreement, as well as all additional rent that would have been due under the tenancy agreement on the date of the Tenants' payment.
6. The rent arrears owing to November 30, 2022 are \$0.00.

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7. The Landlord's representative submitted further that the Tenants' payments since the application was filed did not include payment for the Landlord's application fee of \$186.00. The Landlord's representative stated that the Landlord no longer seeks to terminate the tenancy and evict the Tenants, but only seeks compensation from the Tenants for the Landlord's \$186.00 application fee.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs. In this matter, the Tenants did not pay for all the rent that was in arrears until November 3, 2022 – seven days before the date of this hearing. I therefore find that the Landlord's application was successful, and the Landlord's request to be compensated by the Tenants for the \$186.00 application fee is granted, pursuant to s. 204(2) and s. 204(4) of the *Residential Tenancies Act, 2006*, and in accordance with the Board's Rule of Procedure 23.1.
9. The Landlord collected a rent deposit of \$840.00 from the Tenants and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated. As provided in paragraph 7 above, the Landlord no longer seeks to terminate the tenancy.

It is ordered that:

1. The Tenants shall pay to the Landlord \$186.00 for the cost of filing the application.
2. If the Tenants do not pay the Landlord the full amount owing on or before December 12, 2022, the Tenants will start to owe interest. This will be simple interest calculated from December 13, 2022 at 4.00% annually on the balance outstanding.

December 1, 2022

Date Issued

Frank Ebner

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.