



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

**Citation:** 1212763 Ontario Ltd. v Leighton, 2022 ONLTB 10478

**Date:** 2022-11-01

**File Number:** LTB-L-019894-22

**In the matter of:** 1702, 190 EXBURY RD  
TORONTO ON M3M1R8

**Between:** 1212763 Ontario Ltd.

Landlord

**And**

Leeann Leighton

Tenant

1212763 Ontario Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Leeann Leighton (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 24, 2022.

The Landlord's representative Sharon Harris (SH), the Tenant (LL) and her husband Lawrence Collier (LC) and the occupant Edgardo Rosales (ER) attended the hearing.

### **Preliminary Issue:**

1. On the date of the hearing, the Tenant took the position that she was not the Tenant and believed she signed the lease as guarantor and her son-in-law and family are the Tenants. The Tenant said she has never lived in the rental unit.
2. Submitted into evidence is the lease, where the Tenant is identified as the Tenant, signed as the Tenant and Edgardo Rosales is identified as the occupant.
3. SH said that the Landlord understood that LL was the Tenant, all notices and communication were addressed to LL and delivered to the rental unit. At no time did LL or ER notify the Landlord of the living arrangements nor requested any changes to the lease. ER acknowledged that he received the Landlord's documents, addressed to LL but never forwarded to LL.
4. SH said that the parties have been before the Board on multiple occasions and ER was identified as the occupant. Relying on LTB file TNL-27689-20, dated February 22, 2021, SH said the order reads "The Tenant was assisted by E. Rosales (occupant)."
5. Additionally, I noted during sign in prior to the hearing, the Moderator indicated that ER changed his title between occupant and tenant on several occasions.

6. Based on the evidence before the Board and on a balance of probabilities, I find that LL is the Tenant and ER is the occupant.

**Determinations:**

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,208.22. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$39.72. This amount is calculated as follows: \$1,208.22 x 12, divided by 365 days.
5. The Tenant has paid \$4,100.00 to the Landlord since the application was filed.
6. The rent arrears owing to October 31, 2022 are \$5,149.41.
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 \$1,061.36 from the Tenant 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.

Consideration for Relief

9. In terms of relief under s.83 of the ACT, I explained to the parties that a plain language reading of the ACT says that the Board must have regard to all the circumstances. I interpret this to mean the circumstances to be considered in this case reach beyond the Tenant to the occupant.
10. ER said that he has 2 minor children, works construction, was on strike for 10 weeks and has limited income and options for alternative housing. ER is seeking relief from eviction for 1 year.
11. SH said the application was filed in April 2022 and ER has had significant notice. SH said the arrears are substantial and the Landlord is seeking a standard order for eviction.
12. 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.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.

2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$6,543.63 if the payment is made on or before November 12, 2022. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after November 12, 2022 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before November 12, 2022**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$4,008.75. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$39.72 per day for the use of the unit starting October 25, 2022 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before November 12, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 13, 2022 at 3.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 12, 2022, then starting November 13, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 November 13, 2022.

**November 1, 2022**

**Date Issued**

\_\_\_\_\_  
Dana Wren

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 expires on May 13, 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.

**Schedule 1  
SUMMARY OF CALCULATIONS**

**A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before November 12, 2022**

|  |                   |
|--|-------------------|
| Rent Owing To November 30, 2022  | \$10,457.63       |
| Application Filing Fee   | \$186.00          |
| NSF Charges  | \$0.00            |
| <b>Less</b> the amount the Tenant paid to the Landlord since the application was filed | - \$4,100.00      |
| <b>Less</b> the amount the Tenant paid into the LTB since the application was filed    | - \$0.00          |
| <b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}          | - \$0.00          |
| <b>Less</b> the amount of the credit that the Tenant is entitled to                    | - \$              |
| <b>Total the Tenant must pay to continue the tenancy</b>                               | <b>\$6,543.63</b> |

**B. Amount the Tenant must pay if the tenancy is terminated**

|  |                      |
|--|----------------------|
| Rent Owing To Hearing Date   | \$8,994.47           |
| Application Filing Fee   | \$186.00             |
| NSF Charges  | \$0.00               |
| <b>Less</b> the amount the Tenant paid to the Landlord since the application was filed | - \$4,100.00         |
| <b>Less</b> the amount the Tenant paid into the LTB since the application was filed    | - \$0.00             |
| <b>Less</b> the amount of the last month's rent deposit                                | - \$1,061.36         |
| <b>Less</b> the amount of the interest on the last month's rent deposit                | - \$10.36            |
| <b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}          | - \$0.00             |
| <b>Less</b> the amount of the credit that the Tenant is entitled to                    | - \$                 |
| <b>Total amount owing to the Landlord</b>  | <b>\$4,008.75</b>    |
| Plus daily compensation owing for each day of occupation starting October 25, 2022     | \$39.72<br>(per day) |