



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

Citation: Nassery v Hamilton, 2023 ONLTB 72501

Date: 2023-11-06


File Number: LTB-L-046802-23

In the matter of: 58 LANDOLFI WAY
BRADFORD ON L3Z4L7

Between: Mustafa Nassery

And

Matthew James Hamilton

I hereby certify this is a
true copy of an Order dated
NOV 6, 2023

Landlord and Tenant Board

Landlord

Tenant

Mustafa Nassery (the 'Landlord') applied for an order to terminate the tenancy and evict Matthew James Hamilton (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 25, 2023.

The Landlord Mustafa Nassery and the Landlord's Legal Representative Marshall Yarmus and the Tenant Matthew James Hamilton attended the hearing.

Determinations:

1. At the hearing the Landlord relied on oral submissions and referred to documents to support their application. The Tenant was also given an opportunity to provide submissions and evidence.
2. 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.
3. As of the hearing date, the Tenant was still in possession of the rental unit.
4. The lawful rent is \$2,800.00. It is due on the 1st day of each month.
5. Based on the monthly rent, the daily rent/compensation is \$92.05. This amount is calculated as follows: \$2,800.00 x 12, divided by 365 days.
6. The Tenant has not made any payments since the application was filed.
7. After the application was filed, the Tenant received a credit of \$500.00. The Landlord acknowledged collection a \$500.00 security deposit from the Tenant when the tenancy began. They also acknowledged such a deposit in in contravention of the *Residential Tenancies Act, 2006* (the Act) and wanted the amount credited back to the Tenant. The amount of \$500.00 will be deducted from the rent arrears owing.

8. The rent arrears owing to October 31, 2023 are \$19,700.00.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. The Landlord collected a rent deposit of \$2,800.00 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.
11. Interest on the rent deposit, in the amount of \$90.75 is owing to the Tenant for the period from May 4, 2021 to October 25, 2023.
12. The Landlord sought termination of the tenancy citing the impact the accumulating rent arrears have had on him. He lives with his parents because he cannot afford a home of his own and the mortgage payment on the rental unit. The Landlord stated they attempted to discuss a payment agreement with the Tenant however no concrete proposal materialized and the Tenant has made no payments since the application was filed.
13. The Tenant testified he used to be a professional athlete and has not worked at a typical job in many years. He is self employed, however his funds and assets are tied up in litigation. He survives by borrowing money from friends. He stated that as of the hearing date he cannot pay the Landlord the rent arrears but hopes to have access to his assets by the end of November 2023.
14. Based on the Tenant's complete lack of any income, I find the tenancy is no longer sustainable.
15. The Tenant is 37 years of age. He lives alone and has no health or mobility issues. The Tenant requested at least 30 days to vacate the rental unit if the Landlord's application was granted, however he did not commit to paying monthly rent to the Landlord that will come due on November 1, 2023. The Tenant stated he believed an eviction would be unfair since it would render him homeless.
16. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The date of termination date provides the Tenant more than three weeks from the hearing date to find alternate living accommodations.

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:**
 - \$22,686.00 if the payment is made on or before November 17, 2023. 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 17, 2023 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 17, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$16,496.50. 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 \$92.05 per day for the use of the unit starting October 26, 2023 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 17, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 18, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 17, 2023, then starting November 18, 2023, 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 18, 2023.

November 6, 2023
Date Issued



John Cashmore
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 18, 2024 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 17, 2023

Rent Owing To November 30, 2023	\$23,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$500.00
Total the Tenant must pay to continue the tenancy	\$22,686.00

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

Rent Owing To Hearing Date	\$19,701.25
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$2,800.00
Less the amount of the interest on the last month's rent deposit	- \$90.75
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$500.00
Total amount owing to the Landlord	\$16,496.50
Plus daily compensation owing for each day of occupation starting October 26, 2023	\$92.05 (per day)