



NOV 29, 2023

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

Citation: Dolgin v Brushette, 2023 ONLTB 72154

Date: 2023-11-29

File Number: LTB-L-048816-23

In the matter of: 117 BLUE FOREST CRES
BARRIE ON L9J0N7

Between: Pavel Dolgin and Olga Dolgin

Landlords

And

Leigh-Ann Brushette

Tenant

Pavel Dolgin and Olga Dolgin (the 'Landlords') applied for an order to terminate the tenancy and evict Leigh-Ann Brushette (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 6, 2023.

The Landlord, Pavel Dolgin, the Landlords' Legal Representative, Evgeny Aptekar, and the Tenant attended the hearing.

Determinations:

1. The Landlords 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 \$2,950.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$96.99. This amount is calculated as follows: \$2,950.00 x 12, divided by 365 days.
5. The Tenant has paid \$1,350.00 to the Landlords since the application was filed.
6. The rent arrears owing to November 30, 2023 are \$16,350.00.
7. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlords collected a rent deposit of \$2,950.00 from the Tenant and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.

9. Interest on the rent deposit, in the amount of \$46.07 is owing to the Tenant for the period from March 24, 2023 to November 6, 2023.

Relief from Eviction

10. I am satisfied that the Landlords met their obligation to attempt to negotiate a repayment plan pursuant to section 83(6) of the *Residential Tenancies Act, 2006* (the 'Act') based on the submissions made by the Landlord's Legal Representative as well as the documented evidence that the Landlords and the Tenant submitted a payment plan to the Board prior to the hearing date.
11. Section 83(2) of the Act requires that I consider all of the circumstances of all the parties, and to determine whether to grant, delay, or deny an eviction. On this issue, the Tenant submitted that she had entered into a payment agreement with the Landlords prior to the hearing and due to fraudulent activity, her bank account was put on hold, and she was unable to pay the first installment of her payment agreement. The Tenant did not supply any evidence to substantiate their submission that their account was put on hold and that they were unable to make the previously agreed upon payments.
12. The Tenant testified that she lives in the rental unit with her three minor children (ages 16, 13, and 11) as well as her mother who financially contributes to the household.
13. The Tenant testified that she has just recently secured a part-time job with an hourly wage of \$27.62, and with the possibility of full-time hours. Additionally, the Tenant testified that she had an interview later that week for a full-time job. At the time of the hearing, the Tenant could not testify to what her monthly take home was expected to be as she had only just started at her new job.
14. The Tenant testified that her only income was from her new part-time job and the \$2,600.00 that she receives a month from Child Tax Benefit. She submitted that her mother, who is retired on a fixed income and lives in the rental unit, receives approximately \$1,500.00 a month.
15. The Tenant testified that her monthly expenses including Rent (\$2,950.00), Insurance (\$93.00), Utilities – phone, internet, hydro, water, and gas (\$632.00), Groceries (\$900.00), and Gas for Car (\$200.00) add up to \$4,775.00. The total monthly expenses do not include any extracurricular activities.
16. The Tenant submitted that her children have made friends in the community and attend school. She lives in a great neighbourhood and asked the Board to allow her to remain in the rental unit with a payment plan of \$1,700.00 a month, commencing December 2023, that would span over 9 months.
17. The Landlords' Legal Representative submitted that the Landlords' and the Tenant had previously negotiated a payment plan where the Tenant was to pay rent on time and make an arrears payment of \$1,350.00 commencing November 1, 2023. Tenant only made the arrears payment and not the rent payment. Therefore, increasing the arrears by another month. He submitted that the payment plan that the Tenant put forth was unrealistic as the

Tenant had already defaulted on a payment plan that was less. Additionally, the Tenant testified that she was unsure regarding her new part-time job income, she receives \$2,100.00 from Child Tax Benefit and even if she receives all her mothers \$1,500.00 monthly income, her income of \$3,600.00 does not cover her monthly expenses of \$4,775.00.

18. The Landlords' Legal Representative further submitted that prior to the negotiated payment agreement, the Tenant made no good faith payments to the Landlords despite receiving \$2,100.00 a month from Child Tax Benefit and her mother receiving \$1,500.00 a month. He further submitted that other than the \$1,350.00 payment received on October 31, 2023, the Landlords' last received payment was in June 2023.
19. I find that the tenancy is unsustainable for the Tenant given her current income and the arrears will likely continue to increase as the Tenant was unable to provide a monthly income from her new part-time job. The Tenant's current income is insufficient to meet the monthly rent obligation as well her monthly expenses, let alone plus a repayment plan for the arrears. Also, although the Tenant was confident that her income would increase with her new employment, the Tenant did not have a clear idea of how much income she could expect in the future. Given the unknown amount of income, it would not be realistic to impose a repayment plan.
20. Although the standard 11 days was requested by the Landlord's Legal Representative, I am providing an extension until December 31, 2023 for the Tenant to either pay in full to void this order, or to move out. I am mindful of the Tenant's children who are currently enrolled in school and have determined that an extension until the end of December 2023 is fair in the circumstances.

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:**
 - \$16,536.00 if the payment is made on or before November 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$19,486.00 if the payment is made on or before December 31, 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 December 31, 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 December 31, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$11,171.87. 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 \$96.99 per day for the use of the unit starting November 7, 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 December 10, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 11, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 31, 2023, then starting January 1, 2024, 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 January 1, 2024.

November 29, 2023
Date Issued



Jessica Lapkowski
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 July 1, 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 30, 2023

Rent Owing To November 30, 2023	\$17,700.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,350.00
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	- \$0.00
Total the Tenant must pay to continue the tenancy	\$16,536.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 31, 2023

Rent Owing To December 31, 2023	\$20,650.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,350.00
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	- \$0.00
Total the Tenant must pay to continue the tenancy	\$19,486.00

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

Rent Owing To Hearing Date	\$15,331.94
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,350.00
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	- \$2,950.00
Less the amount of the interest on the last month's rent deposit	- \$46.07
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	- \$0.00
Total amount owing to the Landlord	\$11,171.87
Plus daily compensation owing for each day of occupation starting November 7, 2023	\$96.99 (per day)