



## Order under Section 69 Residential Tenancies Act, 2006

Citation: Jelani v Siddiqui, 2023 ONLTB 79966

Date: 2024-01-02

File Number: LTB-L-028144-22

**In the matter of:** BASEMENT, 1574 LEGER WAY  
MILTON ON L9E1H4

**Between:** Arsalan Ashraf Jelani

**And**

Riaz Siddiqui  
Maha Siddiqui

I hereby certify this is a  
true copy of an Order dated

**JAN 2, 2024**

*BM*

Landlord and Tenant Board

Landlord

Tenants

Arsalan Ashraf Jelani (the 'Landlord') applied for an order to terminate the tenancy and evict Riaz Siddiqui and Maha Siddiqui (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on November 20, 2023.

The Landlord, Arsalan Ashraf Jelani and his Legal Representative Michelle Mont, the Tenant, Riaz Siddiqui and his Agent Neal Bangia attended the hearing. I heard evidence from Mr. Jelani and Mr. Siddiqui.

### Determinations:

1. The Landlord served the Tenants 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 Tenants were still in possession of the rental unit.
3. The lawful rent is \$1,750.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$57.53. This amount is calculated as follows: \$1,750.00 x 12, divided by 365 days.
5. The Tenants have paid \$12,650.00 to the Landlord since the application was filed.

### The amount owing

6. The Landlord claims the Tenants owe \$15,650.00 in rent arrears.
7. The Tenant disputed the amount he owes. The Tenant claims that the Landlord waived the rent for several of the rental periods covered by the application.

8. The Tenant testified that at the beginning of his tenancy his rent was paid in full and on time but that due to a slip and fall accident he was unable to work and unable to pay rent from February to June 2022.
9. It was the Tenant's testimony that he believed that his Landlord was forgiving the rent for the time that he was off work. He believed this to be true as the Landlord knew about the accident, was very helpful to him and did not ask for the rent.
10. The Tenant testified that he returned to work in June 2022 and started paying his rent again in July 2022.
11. On cross-examination, the Tenant testified that there was no written or formal verbal agreement not to pay rent and that he had no idea how long he would be off work.
12. The Tenant also agreed that his Landlord had served him with a N4 on May 4, 2022 due to the unpaid rent.
13. Although the Tenant had testified that he started paying rent after he returned to work, when questioned, he admitted that he had again stopped paying rent.
14. On the other hand, the Landlord testified that he had not, by either written or verbal agreement, agreed to waive any amount of rent.
15. In considering the parties' testimonies, I am not satisfied that the Landlord at anytime waived the Tenant's rent. The fact that the Landlord did not specifically ask the Tenant to pay his rent for certain months does not mean that the Tenant was relieved from his obligation to pay rent under the tenancy agreement. There is no evidence before me to corroborate the Tenant's claim that the Landlord waived the rent for any rental periods, either expressly or implicitly. The fact that the Landlord served an N4 Notice on May 4, 2022, further enforces the fact that the Landlord was expecting to receive rent payments.
16. Therefore, I am satisfied on a balance of probabilities that the rent arrears owing to November 30, 2023, are \$15,650.00, as the Landlord claims.
17. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
18. The Landlord collected a rent deposit of \$1,150.00 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.
19. Interest on the rent deposit in the amount of \$54.76 is owing to the Tenants for the period from June 19, 2021, to November 20, 2023.

### **Relief from eviction**

20. The Tenant testified that he does not want to move and wants to pay his arrears. His income is approximately \$2,600.00 per month and is offering to pay \$300.00 per month on top of his monthly rent toward the arrears. If a payment plan is not an option, the Tenants are seeking at least 2 months to locate a new rental unit.
21. The Landlord, Mr. Jelani, testified about the financial hardship he finds himself in due to the Tenants not paying rent and the mental distress these issues have caused him.

22. 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 not be unfair to postpone the eviction until January 31, 2024, pursuant to subsection 83(1)(b) of the Act.

23. The reason I have not ordered a conditional payment plan as the Tenant requested, is because a payment plan would be unrealistic according to the Tenants' budget. He was only able to contribute \$300 a month towards arrears. This would take over 4 years for the rent arrears to be paid off in full, which would take too long and cause continued financial hardship to the Landlord.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.

2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**

- \$17,586.00 if the payment is made on or before December 31, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

- \$19,336.00 if the payment is made on or before January 31, 2024. See Schedule 1 for the calculation of the amount owing.

3. The Tenants 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 January 31, 2024 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.

4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before January 31, 2024**

5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$14,031.84. 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 Tenants. See Schedule 1 for the calculation of the amount owing.

6. The Tenants shall also pay the Landlord compensation of \$57.53 per day for the use of the unit starting November 21, 2023, until the date the Tenants moves out of the unit.

7. If the Tenants do not pay the Landlord the full amount owing on or before January 31, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 1, 2024, at 7.00% annually on the balance outstanding.

8. If the unit is not vacated on or before January 31, 2024, then starting February 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 February 1, 2024.

**January 2, 2024**  
**Date Issued**

  
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Brenda Mercer  
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 August 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 Tenants 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	\$30,050.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$12,650.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenants are entitled to	- \$0.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$17,586.00</b>

**B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before January 31, 2024**

Rent Owing To January 31, 2024	\$31,800.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$12,650.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenants are entitled to	- \$0.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$19,336.00</b>

**C. Amount the Tenants must pay if the tenancy is terminated**

Rent Owing To Hearing Date	\$27,700.60
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$12,650.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,150.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$54.76
<b>Less</b> the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00

<b>Less</b> the amount of the credit that the Tenants are entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$14,031.84</b>
Plus daily compensation owing for each day of occupation starting November 21, 2023	\$57.53 (per day)