



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

**Citation:** Martin v Brown, 2023 ONLTB 49532

**Date:** 2023-09-26

**File Number:** LTB-L-048589-22

LTB-L-051256-22

**In the matter of:** 207, 18 Rean Drive  
North York ON M2K0C7

**Between:** Bryan Jeffrey Martin

**And**

Tamika Brown

I hereby certify this is a  
true copy of an Order dated  
**SEP 26, 2023**  
Landlord and Tenant Board

Landlord

Tenant

Bryan Jeffrey Martin (the 'Landlord') applied for an order to terminate the tenancy and evict Tamika Brown (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. (L1 application)

The Landlord also claimed charges related to NSF cheques.

The Landlord also applied for an order to terminate the Tenancy because the Tenant has been persistently late in paying the Tenant's rent. (L2 application)

The applications were heard together by videoconference on April 3, 2023.

The Landlord, the Landlord's Legal Representative, Hessam Ghadaki, and the Tenant attended the hearing. The Tenant spoke with Tenant Duty Counsel prior to the hearing. The parties met with a Board mediator prior to the hearing, but were unable to resolve the issues related to these applications.

**Determinations:**

**L1 Application**

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 \$1,821.60. It is due on the 6th day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$59.89. This amount is calculated as follows: \$1,821.60 x 12, divided by 365 days.
5. The Tenant has paid \$9,406.00 to the Landlord since the application was filed.
6. The parties agreed that the total amount owing to the Landlord to April 5, 2023 is \$6,217.80.
7. There is no last month's rent deposit.
8. The Landlord requested an order for eviction.

*Relief from eviction*

9. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and 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.
10. It is not disputed that the Landlord attempted to negotiate a payment plan, and that the Tenant did not agree to a plan. The Tenant testified that she had not wanted to enter a payment arrangement she could not meet, and asked the Landlord to stop contacting her directly earlier this year. The Tenant testified that she had previously notified the Landlord when her rent would be late or short, and only asked him to stop contacting her after receiving several phone calls from a blocked number. The Tenant had informed the Landlord that she was prioritizing her rent payments and would let him know when she could begin to pay the arrears.
11. The Tenant testified that her financial situation had been negatively affected by a death in the family in the Summer of 2022 and that she had recently been more consistent in making rent payments, and was now in a position to begin paying her arrears. The Tenant testified that she will be starting a part-time job, which may pay her an additional \$1,000.00 per month. The Tenant requested a one-year payment plan.
12. The Landlord objected to a payment plan. The Landlord's Legal Representative testified that the Landlord had attempted to work with the Tenant and had agreed to accept the Tenant's rent 5 days after the due date. Although the Tenant had been making payments monthly toward her rent since November, 2022, the payments were "erratic," the Tenant had not made promised payments, and the rent had not been paid in full each month. As a result, the arrears have increased since the application was filed. The Landlord is a small Landlord, and owns one investment property, and the Tenant's arrears and inconsistent payments have caused him emotional and financial stress. The Landlord is seeking repayment of the arrears.
13. I am not persuaded that a payment plan is appropriate under the circumstances. In my view, the Tenant's payment history does not indicate a good faith effort to preserve the tenancy. While the Tenant's stated income and expenses would suggest that the Tenant is currently in a position to pay her rent and her proposed \$500.00 monthly arrears payment, before any potential part-time income, the Tenant has not paid her full rent in the two months immediately preceding the hearing, incurring additional arrears.

14. The Tenant requested a delay in eviction for unspecified employment and health reasons, but did not, when asked, provide detail with respect to the impact of a delay or the length of the delay requested. As such, I did not have sufficient information to determine the appropriateness or duration of a delay. No circumstances were presented to me which would give rise to a denial of eviction.
15. Rent has come due since the hearing. I will direct the Landlord to apply any payments made by the Tenant since the hearing to the balance owing set out in the order below.

### **L2 Application**

1. On September 2, 2022, the Landlord gave the Tenant an N8 Notice of Termination because the Tenant had persistently failed to pay the rent on the date that the rent was due.
2. After the hearing, it came to my attention that the termination date in the N8 Notice is not the last day of a rental period. Section 58(2) of the Act provides that the termination date for a notice of termination at the end of term must be the last day of the rental period.
3. Therefore, the N8 Notice is defective, and the L2 application must be dismissed.

### **It is ordered that:**

### **L1 Application**

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:**
  - \$17,282.40 if the payment is made on or before October 5, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$19,104.00 if the payment is made on or before October 7, 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 October 7, 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 October 7, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$6,268.01. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. See Schedule 1 for the calculation of the amount owing.

6. The Landlord shall apply any payments made by the Tenant since the date of the hearing to the balance owing in paragraphs 2 and 5 above.
7. The Tenant shall also pay the Landlord compensation of \$59.89 per day for the use of the unit starting April 4, 2023 until the date the Tenant moves out of the unit.
8. If the Tenant does not pay the Landlord the full amount owing on or before October 7, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 8, 2023 at 6.00% annually on the balance outstanding.
9. If the unit is not vacated on or before October 7, 2023, then starting October 8, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 October 8, 2023.

### **L2 Application**

11. The L2 application is dismissed.

**September 26, 2023**  
**Date Issued**



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Kathleen Wells  
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 April 8, 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 October 5, 2023**

Rent Owing To October 5, 2023	\$26,187.40
Application Filing Fee	\$186.00
NSF Charges	\$315.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$9,406.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$17,282.40</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before October 7, 2023**

Rent Owing To November 5, 2023	\$28,009.00
Application Filing Fee	\$186.00
NSF Charges	\$315.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$9,406.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$19,104.00</b>

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

Rent Owing To Hearing Date	\$15,173.01
Application Filing Fee	\$186.00
NSF Charges	\$315.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$9,406.00
<b>Total amount owing to the Landlord</b>	<b>\$6,268.01</b>
Plus daily compensation owing for each day of occupation starting April 4, 2023	\$59.89 (per day)