



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Tian v Smith, 2023 ONLTB 56189

**Date:** 2023-08-11

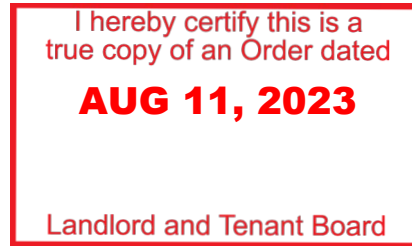
**File Number:** LTB-L-008840-23

**In the matter of:** 9, 71 CASS AVE  
SCARBOROUGH ON M1T3P8

**Between:** Yan Hua Tian and Yong Chen

**And**

Mesha Shannon Smith



Landlords

Tenant

Yan Hua Tian and Yong Chen (the 'Landlords') applied for an order to terminate the tenancy and evict Mesha Shannon Smith (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on July 4, 2023.

Only the Landlords attended the hearing.

As of 11:25 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

### 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 \$2,312.00. It is due on the 8th day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$76.01. This amount is calculated as follows: \$2,312.00 x 12, divided by 365 days.
5. The Tenant has paid \$6,924.00 to the Landlords since the application was filed.
6. The rent arrears owing to July 7, 2023 are \$6,948.00.
7. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

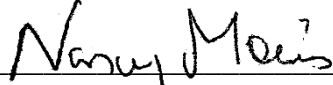
8. The Landlords collected a rent deposit of \$2,285.00 from the Tenant and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
9. Interest on the rent deposit, in the amount of \$103.95 is owing to the Tenant for the period from March 3, 2021 to July 4, 2023.
10. The Landlords request a standard termination order.
11. The Landlords said that they attempted to arrange a payment plan with the Tenant, and they submitted into evidence a signed payment plan from April 2023. They said that the Tenant failed to meet the payment schedule, and they tried to discuss it with her. The Landlords said that the Tenant told them she did not have sufficient funds to pay the arrears or meet the payment plan.
12. 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 Landlords attempted to negotiate a repayment agreement with the Tenant, and I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. In particular, the parties have already attempted a payment plan and the Tenant was unable to honour the terms of the agreement. The Tenant has paid only three months worth of rent in the last seven months, the arrears have increased substantially, and the tenancy is no longer viable. I find that it is prejudicial to the Landlords for the tenancy to continue.

**It is ordered that:**

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**
  - \$11,758.00 if the payment is made on or before August 22, 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 August 22, 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 August 22, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlords \$4,485.32. 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 Landlords owe 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 Landlords compensation of \$76.01 per day for the use of the unit starting July 5, 2023 until the date the Tenant moves out of the unit.

7. If the Tenant does not pay the Landlords the full amount owing on or before August 22, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 23, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before August 22, 2023, then starting August 23, 2023, the Landlords 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 Landlords on or after August 23, 2023.

**August 11, 2023**  
**Date Issued**

  
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Nancy Morris  
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 February 23, 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 August 22, 2023**

Rent Owing To September 7, 2023	\$18,496.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlords since the application was filed	- \$6,924.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlords owe the Tenant for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$11,758.00</b>

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

Rent Owing To Hearing Date	\$13,612.27
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlords since the application was filed	- \$6,924.00
<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	- \$2,285.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$103.95
<b>Less</b> the amount the Landlords owe the Tenant for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total amount owing to the Landlords</b>	<b>\$4,485.32</b>
Plus daily compensation owing for each day of occupation starting July 5, 2023	\$76.01 (per day)