



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

**Citation:** Hajek v Holly, 2023 ONLTB 16275

**Date:** 2023-01-25

**File Number:** LTB-L-013536-22

**In the matter of:** 4, 51 MONT ADAM ST  
SUDBURY ON P3B2V1

**Between:** Joseph Hajek Landlord

**And**

Bryan Weirmier and Lauralee Holly Tenants

Joseph Hajek (the 'Landlord') applied for an order to terminate the tenancy and evict Bryan Weirmier and Lauralee Holly (the 'Tenants') because the Tenants did not pay the rent that the Tenant owes (L1 application)

The Landlord also applied for an order terminating the tenancy and evicting the Tenant because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant and because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises (L2 application).

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement (L2 application).

The Landlord also applied for an order requiring the Tenants to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex (L2 application).

This application was heard by videoconference on January 12, 2023.

Only the Landlord attended the hearing.

As of 10:29a.m., the Tenants were 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:**

### L2 Application

1. Pursuant to section 46 of the Act a notice of termination becomes void 30 days after the termination date listed, unless that tenant vacates, or the landlord applies for an order evicting the tenant. The only exception to this rule is that notices of termination for rent arrears do not expire.
2. The date of termination on the N5 notice of termination served upon the Tenants is December 13, 2021. The L2 application was filed March 17, 2022. As such, the N5 notice of termination is void as the application was not filed in time.
3. The Landlord indicated that because the L1 application had been made out he had no objections to the L2 application being dismissed.

### L1 Application

4. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment 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.
5. As of the hearing date, the Tenants were still in possession of the rental unit.
6. The lawful rent is \$881.70. It is due on the 1st day of each month.
7. Based on the Monthly rent, the daily rent/compensation is \$28.99. This amount is calculated as follows:  $\$881.70 \times 12$ , divided by 365 days.
8. The Tenants have not made any payments since the application was filed.
9. The rent arrears owing to January 31, 2023 are \$10,354.10.
10. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. There is no last month's rent deposit.
12. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including that the Landlord attempted to negotiate a repayment agreement with the Tenants in March 2022 and find that it would be

unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. Additionally, the Tenants did not attend the hearing to provide any evidence relevant to my analysis under section 83 of the Act.

**It is ordered that:**

1. The L2 application is dismissed.
2. Based on the L1 application, the tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
3. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$10,540.10 if the payment is made on or before January 31, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$11,421.80 if the payment is made on or before February 5, 2023. See Schedule 1 for the calculation of the amount owing.
4. 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 February 5, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
5. **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 February 5, 2023.**
6. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$10,006.28. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
7. The Tenants shall also pay the Landlord compensation of \$28.99 per day for the use of the unit starting January 13, 2023 until the date the Tenant moves out of the unit.
8. If the Tenants do not pay the Landlord the full amount owing on or before February 5, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 6, 2023 at 5.00% annually on the balance outstanding.
9. If the unit is not vacated on or before February 5, 2023, then starting February 6, 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 February 6, 2023.

**January 25, 2023****Date Issued**

Amanda Kovats

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 6, 2023 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 January 31, 2023**

Rent Owing To January 31, 2023	\$10,354.10
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$10,540.10</b>

**B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before February 5, 2023**

Rent Owing To February 28, 2023	\$11,235.80
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$11,421.80</b>

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

Rent Owing To Hearing Date	\$9,820.28
Application Filing Fee	\$186.00

NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<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	- \$0.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$10,006.28</b>
Plus daily compensation owing for each day of occupation starting January 13, 2023	\$28.99 (per day)