



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

Citation: Ogundipe v Wilson, 2022 ONLTB 8522

Date: 2022-10-12

File Number: LTB-L-019635-22 and LTB-L-024393-22

In the matter of: MAIN UNIT, 19 DELAMBRAY ST
BRAMPTON ON L6R3R6

Between: Bolatito Ogundipe

And

Ariana Wilson, Shawn Knight

I hereby certify this is a
true copy of an Order dated
OCT 12, 2022
Landlord and Tenant Board

Landlord

Tenant

In the application LTB-L-019635-22, Bolatito Ogundipe (the 'Landlord') applied for an order to terminate the tenancy and evict Ariana Wilson, Shawn Knight (the 'Tenant') because the Tenant has been persistently late in paying the Tenant's rent.

In the application LTB-L-024393-22 Bolatito Ogundipe (the 'Landlord') applied for an order to terminate the tenancy and evict Ariana Wilson, Shawn Knight (the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes (the "L1 Application"); and
- the Tenant has been persistently late in paying the Tenant's rent.

In both applications, the grounds for termination arising from a notice alleging that the Tenant has been persistently late in paying the Tenant's rent are duplicative. They were therefore heard together, and will collectively be referred to as the "L2 Application"

This application was heard by videoconference on October 5, 2022.

The Landlord and the Tenant, Ariana Wilson, attended the hearing. The Tenant spoke with duty counsel prior to the hearing.

Determinations:

1. The Tenant requested an adjournment at the hearing, indicating that she wished the opportunity to obtain bank records that she did not know might be required for her defence in relation to payments received. On my questioning of the Tenant, she indicated that she did not dispute the Landlord's stated accounting that no rent had been paid since that for the rental period ending September 30, 2021, nor did she dispute that all previous rental payments had been made. The request to adjourn was therefore rejected, as the disclosed reason for seeking an adjournment did not relate to a point of any contention between the parties that might have any meaningful impact on my decision.
2. At the hearing, Ms. Wilson argued that some of the arrears were the result of the landlord failing to cash post-dated cheques provided by her. The Landlord's testimony was that two

early cheques were returned for insufficient funds, and her bank refused to accept the cheques from the Tenant after that date. While both parties made submissions on the point of the post-dated cheques, and alternate means of deposit that the Landlord might have made, I ultimately consider the point immaterial to the application before me. When the Tenant was served with the N4 she was legally entitled between that date and the termination date to tender all arrears to void the notice. After the L1 was filed with the Board, the Tenant was legally entitled to discontinue the order by paying all arrears plus the filing fee. The Tenant has failed to do so, and has paid no rent for 13 months. Whatever misunderstanding may have given rise to some of the arrears is in my view not material given the aggregate of rights and circumstances.

3. The Landlord also sought recovery of an enforcement penalty from the municipality. As this was not sought on either application, it was disallowed at the hearing.

L1 Application – Non-Payment of Rent

4. 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.
5. As of the hearing date, the Tenant was still in possession of the rental unit.
6. The lawful rent is \$2,900.00. It is due on the 1 day of each Monthly.
7. Based on the Monthly rent, the daily rent/compensation is \$95.34. This amount is calculated as follows: $\$2,900.00 \times 12$, divided by 365 days. The Tenant has not made any payments since the application was filed.
8. The rent arrears owing to October 31, 2022 are \$37,700.00.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. The Landlord collected a rent deposit of \$2,900.00 from the Tenant 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.
11. Interest on the rent deposit, in the amount of \$54.15 is owing to the Tenant for the period from March 17, 2021 to October 5, 2022.

L2 Application – Persistent Late Payment of Rent

12. The Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the first day of each month. The rent was paid late for the months of May 2021 to September 2021 inclusive and has not been paid at all since. The tenancy started in April 2021. Accordingly, no rent has been paid on time other than pre-paid first month's rent. The pattern of payment shows persistency, both prior to and after the notice.
13. Nevertheless, I find that the primary substance of both applications (including a substantial aspect of the notice for persistently late rent) is non-payment of rent, for which a Tenant has a right in statute to void after an order issues. I have therefore elected to treat the

order as one that the Tenant may void, and if voided impose a requirement that rent be paid in full and on time for one year commencing December 1, 2022.

14. For greater clarity, if the order is voided, the Landlord remains entitled to the rent due November 1, 2022, and the Tenant remains obliged to pay it, but the Landlord cannot bring an application under section 78 for late payment of that month's rent.
15. As application LTB-L-019635-22 is duplicative of the L2 portion of LTB-L-024393-22, I have not awarded the filing fee for LTB-L-019635-22.

Relief from Eviction

16. 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 October 31, 2022 pursuant to subsection 83(1)(b) of the Act.
17. The Tenant alleged that some tensions with the Landlord have inhibited her ability to work, but that she was getting back on her feet. I am satisfied that imposing a payment plan is unrealistic in the current circumstances. The Tenant asked for three months forbearance to void the order or move out, and indicated that she might not be able to pay rent in full and on time until December 1, 2022. The latter point has been assessed in considering the remedy should the Tenant void the L1 order, as previously noted.
18. The Landlord is a single mother and I am satisfied from her testimony that the non-payment of rent for over a year has caused her significant financial hardship. The arrears that would be awarded on a pay-and-go basis are very close to the Board's jurisdictional limit therefore I find a three-month voiding period excessive. I also have regard to the added enforcement times after an order becomes enforceable.
19. I have therefore granted limited forbearance to October 31, 2022.

It is ordered that:

L1 Application – Non-Payment of Rent


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 Board in trust:**
 - \$37,886.00 if the payment is made on or before October 31, 2022. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the Board 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 31, 2022 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 November 10, 2022.**

5. If the Tenant does not void the order, the Tenant owes the Landlord \$32,508.55. 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 \$95.34 per day for the use of the unit starting October 6, 2022 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 October 23, 2022, the Tenant will start to owe interest. This will be simple interest calculated from October 24, 2022 at 4.00% annually on the balance outstanding.
10. If the unit is not vacated on or before October 31, 2022, then starting November 1, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
11. 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 November 1, 2022.

L2 Application – Persistent Late Payment of Rent

12. If the Tenant voids the L1 portion of the order in accordance with paragraph two above, the tenancy shall continue on the following terms.
13. The Tenant shall pay the Landlord the monthly rent due on or before the first day of the month for the period December 1, 2022 to November 1, 2023, inclusive.
14. If the Tenant fails to make any of the payments in paragraph 13 above, the Landlord may apply under section 78 of the Act, within 30 days of the breach and without notice to the Tenant, for an order terminating the tenancy and evicting the Tenant.

October 12, 2022
Date Issued



Ian Speers
Vice Chair, Landlord and Tenant Board

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 of the Tenant expires on May 1, 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before October 31, 2022

Rent Owing To October 31, 2022	\$37,700.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	\$37,886.00

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

Rent Owing To Hearing Date	\$35,276.70
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	- \$2,900.00
Less the amount of the interest on the last month's rent deposit	- \$54.15
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	\$32,508.55
Plus daily compensation owing for each day of occupation starting October 6, 2022	\$95.34 (per day)