



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

Citation: Gabel v Bhanwar, 2024 ONLTB 1302

Date: 2024-01-04

File Number: LTB-L-056848-23

In the matter of: 19 CHURCH ST
PARRY SOUND ON P2A1Y2

Between: Kirk Gabel Landlord

And

Anju Bhanwar Tenant

Kirk Gabel (the 'Landlord') applied for an order to terminate the tenancy and evict Anju Bhanwar (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on December 7, 2023.

Only the Landlord's legal representative Kelly Draycott attended the hearing.

As of 10:22a.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 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. At the hearing, the Landlord's legal representative requested an amendment to the application to correct the spelling of the Tenant's last name from "Bhanwer" to "Bhanwar". I have exercised my discretion under section 201(1) of the *Residential Tenancies Act, 2006*

(the “Act”) to amend the application to reflect the correct spelling of the Tenant’s last name to “Bhanwar”. There is no prejudice to the Tenant from this amendment because it concerns a minor typographical error, and it does not affect the validity of the N4 Notice.

3. As of the hearing date, the Tenant was still in possession of the rental unit.
4. The lawful rent is \$1,452.22. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$47.74. This amount is calculated as follows: \$1,452.22 x 12, divided by 365 days.
6. The Tenant has not made any payments since the application was filed.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,400.00 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.
9. Interest on the rent deposit, in the amount of \$89.12 is owing to the Tenant for the period from October 1, 2019, to December 7, 2023.

The Tenant’s Consumer Proposal

10. At the hearing, the Landlord’s legal representative advised that the Tenant filed a consumer proposal on October 10, 2023. Therefore, I find that pursuant to section 69.2(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (*BIA*) the arrears owing up to and including October 2023 are stayed because they are claims provable in bankruptcy.
11. The Landlord’s legal representative submitted that the Landlord wished to proceed with the application based on arrears owing from November 1, 2023 onward. He submitted the Board’s decision in *Walie v Brennan*, 2022 ONLTB 743 to support this claim. This Board decision is in alignment with the Court decision in *Canadian Petcetera Limited Partnership v. 2876 R Holdings Ltd.*, 2010 BCCA 469 at para. 31, where the court determined that the *BIA* , does not prohibit the termination of a lease for non-payment of rent which is due after the bankruptcy filing.
12. In the case before me, I find that arrears owing for the period beginning November 1, 2023, after the date of bankruptcy, are not claims provable in bankruptcy and, therefore, are not stayed. The *BIA* does not prevent the Board from ordering payment of arrears for this period and/or terminating the tenancy due to arrears for this period. Accordingly, I proceeded to hear the application on that basis.
13. Based on the Landlord’s uncontested evidence, I find that the rent owing from November 1, 2023, till December 31, 2023, is \$2,904.44.

Relief from Eviction

14. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of 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. The Landlord's legal representative is not aware of any circumstances which the Board should be made aware of whether to refuse or delay the eviction.

It is ordered that:

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:**
 - \$4,542.66 if the payment is made on or before January 15, 2024. 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 January 15, 2024, 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 January 15, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$483.28. 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 \$47.74 per day for the use of the unit starting December 8, 2023, 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 January 15, 2024, the Tenant will start to owe interest. This will be simple interest calculated from January 16, 2024, at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before January 15, 2024, then starting January 16, 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 January 16, 2024.

January 4, 2024

Date Issued

Inderdeep Padda
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 July 16, 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 January 15, 2024

Rent Owing to January 31, 2024 (November 1, 2023 to January 31, 2024)	\$4,356.66
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	\$4,542.66

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

Rent Owing to Hearing Date (November 1, 2023 to December 7, 2023)	\$1,786.40
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	- \$1,400.00
Less the amount of the interest on the last month's rent deposit	- \$89.12
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	\$483.28
Plus, daily compensation owing for each day of occupation starting December 8, 2023	\$47.74 (per day)