



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

**Citation:** The Effort Trust Company v Sawyer, 2024 ONLTB 2329

**Date:** 2024-01-25

**File Number:** LTB-L-057877-23

**In the matter of:** 2109, 123 CHARLTON AVE E  
HAMILTON ON L8N3W3

**Between:** The Effort Trust Company Landlord

**And**

Kyle Sawyer Tenant

The Effort Trust Company (the 'Landlord') applied for an order to terminate the tenancy and evict Kyle Sawyer (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on December 21, 2023.

Only the Landlord's Legal Representative, Kimberly Holleran, attended the hearing.

As of 1:46 pm, 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:**

#### Preliminary Matter

1. The Landlord's Legal Representative requested an amendment to the L1 application. The amount owing for the rent period from April 1, 2023 to July 31, 2023 did not correctly identify the numerical amounts. It is noted that the overall rent arrears being claimed remains unchanged.
2. I accepted this amendment as the overall amount of rent arrears remained unchanged and this amended L1 application had been provided to the Tenant prior to the hearing, I did not believe it would prejudice the Tenant who was not in attendance.

#### L1 Application

3. 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.

4. As of the hearing date, the Tenant was still in possession of the rental unit.
5. The lawful rent is \$832.00. It is due on the 1st day of each month.
6. Based on the Monthly rent, the daily rent/compensation is \$27.35. This amount is calculated as follows: \$832.00 x 12, divided by 365 days.
7. The Tenant has paid \$4,426.00 to the Landlord since the application was filed.
8. The rent arrears owing to December 31, 2023 are \$646.00.
9. The Landlord is entitled to \$20.00 to reimburse the Landlord for administration charges the Landlord incurred as a result of 0 cheque given by or on behalf of the Tenant which was returned NSF.
10. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. The Landlord collected a rent deposit of \$749.00 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.
12. Interest on the rent deposit, in the amount of \$69.73 is owing to the Tenant for the period from May 1, 2018 to December 21, 2023.
13. 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 February 24, 2024 pursuant to subsection 83(1)(b) of the Act. The Landlord's Legal Representative had requested a standard 11-day order. She further stated that the Tenant had made additional payment for the arrears on the hearing date but had not been processed yet. In recognizing that significant payments have been made by the Tenant resulting in a lower amount arrears, I believe a postponed eviction by approximately one month to February 24, 2024 will provide the Tenant additional time to possibly address the arrears and preserve their tenancy.

**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:**
  - \$1,684.00 if the payment is made on or before January 31, 2024. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$2,516.00 if the payment is made on or before February 24, 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 February 24, 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 February 24, 2024**
5. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the arrears of rent, compensation and the cost of filing the application and unpaid NSF charges the Landlord is entitled to by \$224.38. See Schedule 1 for the calculation of the amount owing. However, the Landlord is authorized to deduct from the amount owing to the Tenant \$27.35 per day for compensation for the use of the unit starting December 22, 2023 until the date the Tenant moves out of the unit.
6. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
7. If the unit is not vacated on or before February 24, 2024, then starting February 25, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. 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 25, 2024.

**January 25, 2024**  
**Date Issued**

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Justin Leung  
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 25, 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 22, 2024**

Rent Owing To January 31, 2024	\$5,904.00
Application Filing Fee	\$186.00
NSF Charges	\$20.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$4,426.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes 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>\$1,684.00</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 24, 2024**

Rent Owing To February 29, 2024	\$6,736.00
Application Filing Fee	\$186.00
NSF Charges	\$20.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$4,426.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes 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>\$2,516.00</b>

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

Rent Owing To Hearing Date	\$4,814.35
Application Filing Fee	\$186.00
NSF Charges	\$20.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$4,426.00
<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	- \$749.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$69.73
<b>Less</b> the amount the Landlord owes 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 Landlord</b>	<b>\$(224.38)</b>
Plus daily compensation owing for each day of occupation starting December 22, 2023	\$27.35 (per day)