



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

**Citation:** Ramirez v Zita, 2024 ONLTB 2813

**Date:** 2024-01-12

**File Number:** LTB-L-010739-23

**In the matter of:** 63 MUNRO CIR  
BRANTFORD ON N3T0R5

**Between:** Karen Patino Ramirez Landlord

**And**

Leonardo Zita Tenant

Karen Patino Ramirez (the 'Landlord') applied for an order to terminate the tenancy and evict Leonardo Zita (the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes (L1 Application); and,
- the Tenant has been persistently late in paying the Tenant's rent (L2 Application).

This application was heard by videoconference on November 23, 2023.

The Landlord's Legal Representative, G. Gosling, and the Tenant, Joyce Zita, attended the hearing.

The Tenant signed in at 9:30 AM and spoke to Tenant Duty Counsel. The Tenant disconnected around 10:00 AM and did not return to the hearing. The Landlord's Legal Representative attempted to reach out and call the Tenant, with no response.

As of 10:59 AM, 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:**

*L1 Application - Non-Payment of Rent*

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. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$2,600.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$85.48. This amount is calculated as follows: \$2,600.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to November 30, 2023, are \$26,820.00.
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 \$2,000.00 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 \$115.81 is owing to the Tenant for the period from December 10, 2019, to November 23, 2023.

*L2 Application - Persistent Late Payment of Rent*

10. On January 10, 2023, the Landlord gave the Tenant an N8 notice of termination deemed served on January 15, 2023. The notice of termination alleges the Tenant paid rent late 10 out of 14 months beginning December 1, 2021, continuing through to January 1, 2023.
11. Based on the uncontested evidence of the Landlord's Representative, I find that the Tenant has persistently failed to pay the rent on the date it was due.
12. The rent is due on the 1<sup>st</sup> day of each month. The N8 Notice sets out the dates rent was paid after the first for the months of December 2021 through to November 2022, and that no rent was paid for December 2022 through January 2023.
13. The Landlord's Representative testified that the dates of the payments on the N8 Notice were accurate and that, following the service of the N8 Notice, a partial payment was made for December 2022's rent with the remainder of December 2022 through to November 2023 was unpaid.
14. The Landlord's Representative submitted that the Landlord followed up with the Tenant on many occasions regarding the late payment of rent.

Section 83

15. Section 83 requires that I consider all the circumstances, including the Tenant's and the Landlord's situations to determine if it would be appropriate to grant section 83 relief from eviction.
16. The Landlord's representative advised that the Landlord has tried to reach out to the Tenant on multiple occasions for a repayment plan, with no response. The Landlord's representative was not made aware of any other relevant issues for consideration under s.83.
17. The Tenant attended the hearing, spoke to Tenant Duty Counsel and then disconnected with no sign of an attempt to reconnect. Therefor, the Tenant did not attend the hearing, and thus did not provide any evidence that may be relevant to my determination under s. 83.
18. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (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.

**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 LTB in trust:**
  - \$32,206.00 if the payment is made on or before January 23, 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 23, 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 23, 2024.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$24,256.23. 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 \$85.48 per day for the use of the unit starting November 24, 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 23, 2024, the Tenant will start to owe interest. This will be simple interest calculated from January 24, 2024, at 7.00% annually on the balance outstanding.
- 8. If the unit is not vacated on or before January 23, 2024, then starting January 24, 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 24, 2024.

*L2 Application – Persistent Late Payment of Rent*

- 10. If the Tenant voids the L1 portion of the order in accordance with paragraph 2 above, the tenancy shall continue on the following terms.
- 11. The Tenant shall pay the Landlord the monthly rent due on or before the first day of the month for the period of February 1, 2024, to January 1, 2025.
- 12. If the Tenant fails to make any of the payments in paragraph 11 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.

**January 12, 2024**

**Date Issued**

\_\_\_\_\_  
Kevin O'Brien

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 24, 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 23, 2024**

Rent Owing To January 31, 2024	\$32,020.00
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 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>\$32,206.00</b>

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

Rent Owing To Hearing Date	\$26,186.04
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	- \$2,000.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$115.81
<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>\$24,256.23</b>
Plus daily compensation owing for each day of occupation starting November 24, 2023	\$85.48 (per day)

2024 ONL TB 2813 (CanLI)