



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

**Citation:** Brozina v Selmanovic, 2023 ONLTB 79753

**Date:** 2023-12-14

**File Number:** LTB-L-083408-23

**In the matter of:** 1004, 1135 Royal York Road Etobicoke  
Ontario M9A0C3

**Between:** Peter Brozina Landlord

**And**

Sandro Selmanovic Tenant

Peter Brozina (the 'Landlord') applied for an order to terminate the tenancy and evict Sandro Selmanovic (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 November 22, 2023.

Only the Landlord's Agent N. Kyriakoulis attended the hearing.

As of 11:19am the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB.

### **Preliminary Issue:**

At the start of the hearing, I advised the Landlord's agent that the Board's hearing support line received a message from the Tenant. Upon call back, the Tenant advised that he was currently in the emergency room and would not be attending the hearing. I was not advised that he asked for an adjournment of the matter. On my own initiative, I considered whether I should adjourn the matter and asked the Landlord's agent for her position. She was opposed to an adjournment as it would prejudice the Landlord, her elderly father, who is suffering financially as a result of the Tenant's non-payment of rent. I did not grant an adjournment in this matter as the Tenant did not ask for one. As the Tenant was clearly capable of calling the Board's hearing support line, had he

wanted an adjournment he could have called into the hearing itself to ask for one. As a result, the hearing proceeded with only the Landlord's evidence.

**Determinations:**

1. This application for non-payment of rent is based on a notice of termination issued pursuant to s. 59(1) of the Residential Tenancies Act, 2006 (the 'Act'). That provision states that the notice must not have a date of termination on it that is earlier than the date which is fourteen days after the notice is given. The date of termination on the Landlord's notice is August 16, 2023.
2. This means that the Landlord must have given the notice to the Tenant on or before August 2, 2023.
3. When a landlord files an application with the Board for an eviction order based on a notice of termination, the landlord is required to provide the Board with a certificate of service setting out how and when the tenant was given the notice. (See paragraph 1 of s. 53 of Ontario Regulation 516/06.)
4. The Landlord filed a certificate of service with the Board stating that on August 2, 2023 the N4 Notice was served on the Tenant by "leaving with the security concierge desk" [sic]. I advised the Landlord's agent that leaving the N4 Notice with a concierge desk is not an approved method of service under s. 191(1) of the *Residential Tenancies Act, 2006* or the Board's Rules of Procedure, Rule 3.1.
5. However, where a notice is given to a tenant by a method other than one of those listed, s. 191(3) states that it will be deemed to have been validly given if its contents actually came to the attention of the person for whom it was intended within the required time period.
6. The Landlord's agent tendered a text message exchange between her husband Demitrios Kyriakoulis, who signed the certificate of service, and the Tenant on August 2 and August 3, 2023 regarding the N4 Notice. She testified that her husband texted the Tenant to confirm he received the notice. On August 2 at 11:48am, Mr. Kyriakoulis texted the Tenant saying "Hello, I left envelope at front desk for you to pick up." On August 3 at 11:21am the Tenant replied, "Hey Demitri, I picked up the envelope yesterday. I apologize I didn't acknowledge your text yesterday."
7. Based on the uncontested evidence contained in the text message exchange, I am satisfied that the N4 Notice came to the attention of the Tenant within fourteen days of the termination date.
8. 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.
9. As of the hearing date, the Tenant was still in possession of the rental unit.
10. The lawful rent is \$2,300.00. It is due on the 1st day of each month.

11. Based on the Monthly rent, the daily rent/compensation is \$75.62. This amount is calculated as follows:  $\$2,300.00 \times 12$ , divided by 365 days.
12. The Tenant has paid \$1,000.00 to the Landlord since the application was filed.
13. The rent arrears owing to November 30, 2023 are \$10,500.00. This amount accounts for the months of July 2023 – November 2023, minus the payments made by the Tenant in paragraph 12 ( $\$2,300.00 \times 5 = \$11,500.00 - \$1,000.00 = \$10,500.00$ ).
14. At the hearing, I asked whether there was a rent deposit, as the application said there was not. The Landlord's agent testified that there was a rent deposit of \$2,300.00 paid to the Landlord on August 11, 2022, but that as the Tenant did not pay rent in July, the deposit was applied to the July arrears.
15. I explained to the Landlord's agent that pursuant to s. 106(10) of the Act, the last month's rent deposit can only be applied to the last month of the tenancy. As such, I explained that the last month's rent deposit was still being held by the Landlord. The Landlord's agent asked to amend the application to include the arrears from July 2023 and I allowed that amendment.
16. The Landlord is entitled to \$60.00 to reimburse the Landlord for administration charges and \$0.00 for bank fees the Landlord incurred as a result of 3 cheques given by or on behalf of the Tenant which was returned NSF. As I explained to the Landlord's agent, the maximum administration charge allowable is \$20.00 for each NSF cheque. In addition, I disallowed the claims for overdraft interest charges claimed by the Landlord. Pursuant to paragraph 4 of s. 17 of O. Reg. 516/06, only NSF charges are permitted.
17. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
18. The Landlord collected a rent deposit of \$2,300.00 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.
19. Interest on the rent deposit, in the amount of \$73.88 is owing to the Tenant for the period from August 11, 2022 to November 22, 2023.
20. 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.
21. The Landlord's agent testified that the Landlord has attempted to negotiate a repayment plan with the Tenant and has in fact negotiated payment plans with the Tenant, but that the Tenant has failed to follow them through. The Landlord's agent tendered an e-mail exchange between her husband and the Tenant on October 19, 2023 outlining a payment plan to clear the rent arrears. The Landlord's agent testified that the Tenant made the first two payments of \$500.00 each (as captured in paragraph 12), but that he has not made

payments since. I am satisfied that the Landlord attempted to negotiate a payment plan with the Tenant.

22. The Landlord's agent testified that she was not aware of any circumstances that would cause me to delay or deny 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:**
  - \$13,061.00 if the payment is made on or before December 31, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

- \$15,361.00 if the payment is made on or before January 3, 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 3, 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 3, 2024**
  5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$7,750.76. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. See Schedule 1 for the calculation of the amount owing.
  6. The Tenant shall also pay the Landlord compensation of \$75.62 per day for the use of the unit starting November 23, 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 December 25, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 26, 2023 at 7.00% annually on the balance outstanding.
  8. If the unit is not vacated on or before January 3, 2024, then starting January 4, 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 4, 2024.

**December 14, 2023**

**Date Issued**

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**Angela Long**

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 4, 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 December 31, 2023**

Rent Owing To December 31, 2023	\$13,800.00
Application Filing Fee	\$201.00
NSF Charges	\$60.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$1,000.00
<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>\$13,061.00</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before January 3, 2024**

Rent Owing To January 31, 2024	\$16,100.00
Application Filing Fee	\$201.00
NSF Charges	\$60.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$1,000.00
<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>\$15,361.00</b>

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

Rent Owing To Hearing Date	\$10,863.64
Application Filing Fee	\$201.00
NSF Charges	\$60.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$1,000.00
<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	- \$2,300.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$73.88
<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>\$7,750.76</b>
Plus daily compensation owing for each day of occupation starting November 23, 2023	\$75.62 (per day)

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