



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Fouad v Thompson, 2023 ONLTB 78710

**Date:** 2023-12-05

**File Number:** LTB-L-010423-23

**In the matter of:** BASEMENT, 3843 DENSBUURY DR MISSISSAUGA  
ON L5N6Z3

**Between:** Somaia Fouad Landlord

**And**

Andre Elvin jr. Thompson Tenant

Somaia Fouad (the 'Landlord') applied for an order to terminate the tenancy and evict Andre Elvin jr. Thompson (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes; and, because the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation

This application was heard by videoconference on October 3, 2023.

The Landlord, the Tenant and the Tenant's witness S. Smith attended the hearing..

### **Determinations:**

L2/N12 Application: preliminary matter

1. The Landlord served the Tenants with a Form N12, containing a termination date of November 30, 2022. The Landlord's L2 Application was filed with the Board on February 1, 2023.
2. Section 66(2) of the *Residential Tenancies, 2006* (the "Act") provides that an application for an order terminating a tenancy and evicting a tenant "may not be made later than 30 days after the termination date specified in the notice" [emphasis added]. Moreover, section 46(1) of the Act provides that such a notice of termination becomes void 30 days after the termination date specified in the notice unless, among other things, the landlord files an application in respect of the notice. In this case, the Landlord's application was filed with the Board more than 30 days after the termination date in the Form N12. As the Landlord

did not commence this application within 30 days of the termination date, the Landlord's L2 application must therefore fail.

#### L1/N4 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 \$1,280.00. It is due on the 20th day of each month.
6. Based on the Monthly rent, the daily rent/compensation is \$42.08. This amount is calculated as follows: \$1,280.00 x 12, divided by 365 days.
7. The Tenant has not made any payments since the application was filed.
8. The rent arrears owing to October 19, 2023 are \$15,190.00. This amount was not disputed by the Tenant.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. There is no last month's rent deposit.

#### Section 83

11. 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.
12. The Landlord's representative advised that the Landlord has tried to reach out to the Tenant for a repayment plan, without success. The Landlord seeks eviction as soon as possible, noting the Tenant's non-payment has caused the Landlord significant financial strain.
13. The Tenant lives alone. There are substantial arrears owing and, in the circumstances, I find the Tenant's failure to pay any rent over several months suggests an inability and/or unwillingness to comply with a repayment plan moving forward. Moreover, at the hearing, the Tenant indicated he has been searching for alternative accommodations and requested 3 months to find alternative accommodations.
14. The Tenant has already been given time since the hearing date to either pay the rent arrears they owe or find alternative accommodations. Furthermore, the Tenant shall receive some additional time due to the inevitable delay of the Landlord enforcing the order

through the sheriff's office. I have considered all of the disclosed circumstances in accordance with subsection 83 of the *Residential Tenancies Act, 2006* (RTA), including whether the Landlord attempted to negotiate a repayment agreement with the Tenant, and find that it would be unfair to deny eviction pursuant to subsection 83(1) of the Act.

**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:**
  - \$17,936.00 if the payment is made on or before December 16, 2023. 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 December 16, 2023 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 December 16, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$14,618.56. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$42.08 per day for the use of the unit starting October 4, 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 16, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 17, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 16, 2023, then starting December 17, 2023, 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 December 17, 2023.
10. The Landlord's L2 Application is dismissed.

**December 5, 2023**

**Date Issued**

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Peter Nicholson

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 June 17, 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 16, 2023**

Rent Owing To December 19, 2023	\$17,750.00
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>\$17,936.00</b>

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

Rent Owing To Hearing Date	\$14,432.56
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	- \$0.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord</b>	<b>\$14,618.56</b>
Plus daily compensation owing for each day of occupation starting October 4, 2023	\$42.08 (per day)