



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

**Citation:** Cai v Charles, 2023 ONLTB 78011

**Date:** 2023-12-04

**File Number:** LTB-L-045681-23

**In the matter of:** 3353 SKIPTON LANE  
OAKVILLE ON L6M0K3

**Between:** Qilin Cai Landlord

**And**

Donna Charles Tenant

Qilin Cai (the 'Landlord') applied for an order to terminate the tenancy and evict Donna Charles (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 20, 2023.

Only the Landlord's legal representative Yun Tao Li attended the hearing.

The Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB.

### **Tenant's request to reschedule:**

1. There was a record of a request to reschedule the hearing submitted by the Tenant on November 15, 2023. The Tenant states in their request that they did not have knowledge of the hearing until November 13, 2023. As a result, they are inadequately prepared to proceed and wish to reschedule.
2. I have reviewed the Board's file which indicates that the Notice of Hearing was mailed to the Tenant on August 3, 2023.
3. I canvassed submissions from the Landlord's representative regarding the request to reschedule. The Landlord's representative brought a text message to my attention dated

September 28, 2023 where the Landlord's real estate agent is informing the Tenant of a hearing scheduled for November 20, 2023.

4. Further, the Landlord's representative submitted that an adjournment would cause prejudice to the Landlord as the arrears are approaching the monetary jurisdiction of the Landlord and Tenant Board.
5. The request to reschedule was not made on the consent of the parties as required by LTB Rule of Procedure 21.1. Therefore, the Tenant should have attended the hearing to request an adjournment.
6. Based on the evidence and submissions before I do not find that an adjournment is required to provide the Tenant with an adequate opportunity to participate in this proceeding. I am satisfied that the Tenant has known about this hearing for several months.
7. Therefore, request to reschedule is denied. As a result, the hearing proceeded with only the Landlord's evidence.

**Determinations on rent arrears:**

8. 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.
9. As of the hearing date, the Tenant was still in possession of the rental unit.
10. The lawful rent is \$4,180.00. It is due on the 24th day of each month.
11. Based on the Monthly rent, the daily rent/compensation is \$137.42. This amount is calculated as follows: \$4,180.00 x 12, divided by 365 days.
12. The Tenant has not made any payments since the application was filed.
13. The rent arrears owing to November 23, 2023 are \$27,540.00.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The Landlord collected a rent deposit of \$4,180.00 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.
16. Interest on the rent deposit, in the amount of \$272.10 is owing to the Tenant for the period from August 24, 2019 to November 20, 2023.

17. 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 December 23, 2023 pursuant to subsection 83(1)(b) of the Act. Having reviewed the Tenant's request to reschedule I note that the Tenant indicated they have recently had surgery and are currently in recovery. Despite no documentary evidence in support, I have taken the Tenant's request into consideration and have delayed 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:**
  - \$31,906.00 if the payment is made on or before December 23, 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 23, 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 23, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$22,941.66. 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 \$137.42 per day for the use of the unit starting November 21, 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 23, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 24, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 23, 2023, then starting December 24, 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 24, 2023.

**December 4, 2023**

**Date Issued**

**Brett Lockwood**

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 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 December 23, 2023**

Rent Owing To December 23, 2023	\$31,720.00
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>\$31,906.00</b>

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

Rent Owing To Hearing Date	\$27,207.76
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	- \$4,180.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$272.10

<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>\$22,941.66</b>
Plus daily compensation owing for each day of occupation starting November 21, 2023	\$137.42 (per day)