



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

Citation: Gomes v Davidson, 2023 ONLTB 78040

Date: 2023-11-29

File Number: LTB-L-045055-23

In the matter of: Basement, 13 Trawley Crescent Ajax
Ontario L1S5Y7

Between: Sunita Gomes Landlord

And

Kayla Anne Marie Harrison Tenant

Sunita Gomes (the 'Landlord') applied for an order to terminate the tenancy and evict Daveen J Davidson and Kayla Anne Marie Harrison (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 26, 2023.

The Landlord, the Tenant Kayla Anne Marie Harrison and Daveen J Davidson attended the hearing. At the hearing, the parties requested, on consent, that Daveen J Davidson be removed as a party in this application.

Determinations:

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 \$1,700.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$55.89. This amount is calculated as follows: \$1,700.00 x 12, divided by 365 days.

5. The Tenant has paid \$650.00 to the Landlord since the application was filed.
6. The rent arrears owing to October 31, 2023 are \$8,950.00.
7. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,700.00 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 \$49.02 is owing to the Tenant for the period from September 1, 2022 to October 26, 2023.

Section 83

10. 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.
11. The Tenant seeks to remain at the rental unit and proposed to pay back the arrears in the amount of \$500/month. Although the Tenant stated she earns a total of \$2,500 bi-weekly, the Tenant has not made any rent payments since June 2023, nor did the Tenant produce any supporting or documentary evidence of income/employment. The Tenant indicated she simply withheld rent, as a result of the Landlord not removing Daveen J Davidson as a Tenant under the lease when Daveen J Davidson vacated the rental unit at the beginning of June 2023.
12. The Landlord seeks eviction, noting the Tenant's non payment has caused stress and financial strain, and noted that the proposed repayment plan, even if the Tenant were to comply, would be unduly long and prejudicial.
13. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006*(the 'Act'), including the Tenant's personal and financial circumstances, and balanced this with any potential prejudice to the Landlord. In the circumstances, including the Tenant's non-payment of any rent over a significant period of time, I find on a balance of probabilities the Tenant would most likely not comply with a proposed repayment plan requiring the payment of both ongoing rent and arrears. This would be unfairly prejudicial to the Landlord. However, I do find that it would not be unfair to postpone the eviction until January 5, 2024 pursuant to subsection 83(1)(b) of the Act. The delay should afford the Tenant some additional time to either pay the arrears and void the order and/or to secure alternative housing.

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:**
 - \$12,551.00 if the payment is made on or before November 30, 2023. See Schedule 1 for the calculation of the amount owing.
 - **OR**
 - \$15,951.00 if the payment is made on or before December 31, 2023. See Schedule 1 for the calculation of the amount owing.

 - **OR**
 - \$19,351.00 if the payment is made on or before January 5, 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 5, 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 5, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$6,908.26. 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 \$55.89 per day for the use of the unit starting October 27, 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 5, 2024, the Tenant will start to owe interest. This will be simple interest calculated from January 6, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before January 5, 2024, then starting January 6, 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 6, 2024.

November 29, 2023

Date Issued

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 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 November 30, 2023

Rent Owing To November 30, 2023	\$13,000.00
Application Filing Fee	\$201.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$650.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$12,551.00

B. 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	\$16,400.00
Application Filing Fee	\$201.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$650.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$15,951.00

C. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before January 5, 2024

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Rent Owing To January 31, 2024	\$19,800.00
Application Filing Fee	\$201.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$650.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$19,351.00

D. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$9,106.28
Application Filing Fee	\$201.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$650.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,700.00
Less the amount of the interest on the last month's rent deposit	- \$49.02
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$6,908.26
Plus daily compensation owing for each day of occupation starting October 27, 2023	\$55.89 (per day)