



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Dost v Parsons, 2023 ONLTB 76601

**Date:** 2023-11-23

**File Number:** LTB-L-060977-23

**In the matter of:** M, 18 HENRY ST  
BRANTFORD ON N3R1Z8

**Between:** Khurshid Anwar Dost Landlord

**And**

Shawna Parsons Tenant

Khurshid Anwar Dost (the 'Landlord') applied for an order to terminate the tenancy and evict Shawna Parsons (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 11, 2023 at 9:57 a.m.

The Landlord Anwar Dost the Landlord's representative Kurt Shmuir, licensed paralegal and the Tenant Shawna Parsons attended the hearing. Scouter Ward also attended the hearing as a witness for the Landlord.

### **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 \$2,100.00. It is due on the 1<sup>st</sup> day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$69.04. This amount is calculated as follows: \$2,100.00 x 12, divided by 365 days.

### Amount of Arrears

5. The Landlord testified the rent arrears owing to October 31, 2023 are \$31,950.00. The Landlord submitted a list of payment records. The Landlord further substantiated the testimony through banking statements received as part of a post-hearing submission.
6. The Tenant disputed the rent arrears owing and testified the rent arrears owing to October 31, 2023 are \$9,000.00. The Tenant further substantiated her testimony through banking statements received as part of a post-hearing submission. The Tenant further testified

payments were made through a variety of mediums via e-transfer as well as cash payments to the superintendent.

7. After considering all of the evidence, including comparing the banking records of both parties, I find that the rent arrears owing to October 31, 2023 are \$14,200.00. The following are my reasons:

May 1, 2022 to December 31, 2022

8. The Landlord claimed the total rent owing on the L1 Application was \$27,936.00. The Landlord submitted bank records as supporting documentation. These records were not however submitted in the form of a detailed rent ledger, causing difficulty to incrementally calculate the amount of arrears.
9. The Tenant testified between May 1, 2022 and December 31, 2022 the Tenant made \$14,100.00 in payments. The Tenant submitted bank records as supporting documentation in evidence which supported this testimony which included the payment dates and amounts.
10. It was undisputed that the Tenant began to accumulate arrears in the period beginning May 1, 2022 as stated in the N4 Notice. However, I am more convinced by the Tenant's bank records and testimony which provided dates and payment amounts made during this period. Therefore, I find the total arrears owing for the period beginning May 1, 2022 ending December 31, 2022 is \$2,700.00.

January 1, 2023 to April 30, 2023

11. Comparing records from both parties, it is undisputed that the Tenant paid the lawful monthly rent that came due between January 1, 2023 and April 30, 2023. The total arrears owing for the period between January 1, 2023 and April 30, 2023 is \$0.00. It is also undisputed that several of these payments were late.

May 1, 2023 to July 31, 2023

12. The Landlord testified between May 1, 2023 and July 31, 2023 the Tenant made \$1,100.00 in payments. The Landlord submitted bank records as supporting documentation in evidence which supported this testimony.
13. The Tenant testified between May 1, 2023 and July 31, 2023 the Tenant made \$6,300.00 in payments, in cash. The Tenant submitted a witness statement into evidence which supported this testimony.
14. I find that it is more likely that not the Tenant did not make the cash payments. Had the Tenant called the witness to provide testimony, rather than rely solely on the written statement, this would have added weight to the Tenant's evidence. The Landlords' witness, Mr. Ward testified he had no record of the cash payments. Therefore, I find the total arrears owing for the period between May 1, 2023 and July 31, 2023 is \$5,200.00.

August 1, 2023 to October 31, 2023

15. It is undisputed that the Tenant did not pay the lawful monthly rent that came due between August 1, 2023 and the hearing date. The total arrears owing for this period is \$6,300.00.
16. After considering all of the evidence, including comparing the banking records of both parties, I find that the rent arrears owing to October 31, 2023 are \$14,200.00.
17. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
18. The Landlord collected a rent deposit of \$2,100.00 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.

Relief from Eviction

19. 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.

Maintenance – Serious Breach

20. The Tenant alleged that there have been ongoing maintenance problems with the unit and submitted that these circumstances result in mandatory refusal of eviction under subsection 83(3)(a) of the Act. That section states that the Board must deny eviction when “the landlord is in serious breach of the landlord’s responsibilities under this Act or of any material covenant in the tenancy agreement.”
21. The events alleged by the Tenant include issues with the smoke detectors, backyard mowing, a leak in the ceiling, issues with the front door, and an unpaved parking lot that was unsafe.
22. Tenant testified that he informed the Landlord on or about February 10, 2022 and the Landlord was unresponsive. The Tenant further testified she has been unable to use the kitchen counter, has incurred \$500.00 in costs to mow the lawn, and tripped and fell in the parking lot area which resulted in a trip to the hospital.
23. The Landlord denied knowing about the maintenance issues. The Landlord’s representative submitted even if the kitchen ceiling leak was ongoing, the condition of the kitchen leak was not serious highlighting only a portion of the cupboard space might have been impacted. Moreover, the Landlord testified the Tenant was exaggerating about the condition of the parking lot, door, smoke detectors and mowing issues so even if the Landlord did know about the issues, the issues were not serious.
24. With respect to the lawn, Subsection 83(3)(a) of the Act speaks in the present tense, thus I cannot consider past breaches that have been remedied. The Tenant testified that they

have mowed the lawn so the evidence before me suggests that the matter with the lawn has been addressed at one point mitigating the severity of the issue.

25. With respect the remaining issues, I have considered all the evidence and I find that the use of the word “serious” in subsection 83(3)(a) establishes that not all breaches of the Landlord’s responsibilities can be considered; only those determined by the Member to be serious will invoke section 83(3) of the Act. Even if all of the ceiling leak, smoke detector, front door and parking lot issues were ongoing, I am not satisfied based on the Tenant’s evidence or description of them that the matters, alone or in the aggregate, constitute a serious breach of any responsibilities of the Landlord under 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:**
  - \$16,486.00 if the payment is made on or before November 30, 2023. See Schedule 1 for the calculation of the amount owing.
  - \$18,586.00 if the payment is made on or before December 4, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

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 4, 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 4, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$10,871.94. 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 \$69.04 per day for the use of the unit starting October 12, 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 4, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 5, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 4, 2023, then starting December 5, 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 5, 2023.

**November 23, 2023**

**Date Issued**

\_\_\_\_\_  
Greg Witt

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 5, 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	\$16,300.00
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>\$16,486.00</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 4, 2023**

Rent Owing To December 31, 2023	\$18,400.00
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>\$18,586.00</b>

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

Rent Owing To Hearing Date	\$12,859.44
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	- \$2,100.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$73.50
<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>\$10,871.94</b>
Plus daily compensation owing for each day of occupation starting October 12, 2023	\$69.04 (per day)