



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

**Citation:** Martino v Da Silva et al, 2023 ONLTB 74041

**Date:** 2023-11-10

**File Number:** LTB-L-002542-23

**In the matter of:** Apartment 1, 8 WATT AVE  
YORK ON M6M3R1

**Between:** Rosa Martino Landlord

**And**

Frank Da Silva, Lucy Da Silva and Nicholas Da Silva Tenants

Rosa Martino (the 'Landlord') applied for an order to terminate the tenancy and evict Frank Da Silva, Lucy Da Silva and Nicholas Da Silva (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on June 19, 2023. Only the Landlord's representative Carlos Oliveira attended the hearing. The Tenants were not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

### **Determinations:**

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenants 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 Tenants were still in possession of the rental unit.
3. The lawful rent is \$2,000.00. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$65.75. This amount is calculated as follows: \$2,000.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to June 30, 2023 are \$16,000.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$2,000.00 from the Tenants 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 \$65.62 is owing to the Tenants for the period from February 26, 2022 to June 19, 2023.
10. 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 Tenants, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenants were not present to explain their financial circumstances.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenant voids this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$26,186.00 if the payment is made on or before November 21, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants 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 November 21, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before November 21, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$13,369.63. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$65.75 per day for the use of the unit starting June 20, 2023 until the date the Tenants move out of the unit.

7. If the Tenants do not pay the Landlord the full amount owing on or before November 21, 2023, the Tenants will start to owe interest. This will be simple interest calculated from November 22, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 21, 2023, then starting November 22, 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 November 22, 2023.

**November 10, 2023**

**Date Issued**

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André-Paul Baillargeon-Smith

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 May 22, 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before November 21, 2023**

Rent Owing To November 30, 2023	\$26,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owe the Tenants for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenants are entitled to	- \$0.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$26,186.00</b>

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

Rent Owing To Hearing Date	\$15,249.25
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$2,000.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$65.62
<b>Less</b> the amount the Landlord owe the Tenants for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenants are entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$13,369.63</b>
Plus daily compensation owing for each day of occupation starting June 20, 2023	\$65.75 (per day)