



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

Citation: AMSTAR POOL I LP v Bowman, 2023 ONLTB 72931

Date: 2023-11-09

File Number: LTB-L-004547-23

In the matter of: 2003, 2737 KIPLING AVE ETOBICOKE
ON M9V4C3

Between: AMSTAR POOL I LP Landlord

And

Terika Bowman and Kevon Anthony Lewis Tenants
AMSTAR POOL I LP (the 'Landlord') applied for an order to terminate the tenancy and evict Terika Bowman and Kevon Anthony Lewis (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on October 23, 2023.

The Landlord's legal representative Michelle Forrester and the Tenants attended the hearing.

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 \$1,500.99. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$49.35. This amount is calculated as follows: \$1,500.99 x 12, divided by 365 days.
5. It was uncontested that the Tenants have paid \$3,200.00 to the Landlord since the application was filed. It was also uncontested that the rent arrears owing to October 31, 2023 are \$13,162.55.

6. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
7. The Landlord collected a rent deposit of \$1,391.38 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.
8. Interest on the rent deposit, in the amount of \$75.52 is owing to the Tenants for the period from January 1, 2020 to October 23, 2023.

Relief from Eviction

9. At the hearing, the Tenants provided evidence regarding their circumstances under section 83 of the *Residential Tenancies Act, 2006* (the 'Act') and requested that their tenancy be preserved. Specifically, the Tenants gave evidence regarding their financial situation. Ms. Bowman testified that she had lost her job and has only recently received money through Ontario Works. She stated that she has just got a new job and starts in the coming weeks. Mr. Lewis also stated that he received money from Ontario Works and also just got a new job. The Tenants requested a payment plan for the arrears in addition to paying \$4,000.00 as soon as possible.
10. The Landlord's representative cross-examined the Tenants regarding their former and future income. We find that the Tenant's evidence was internally inconsistent and contradictory. An example of this inconsistency was that Mr. Lewis denied having an income to pay the rent as it fell due, specifically he denied receiving Ontario Works, then later in his testimony he ultimately admitted that he did receive funds from Ontario Works, but did not pay the rent. We found the income evidence from the Tenants to be both inconsistent and unreliable.
11. The Landlord's representative gave evidence that the Landlord is suffering financially due to the Tenants' non-payment of rent and the very substantial arrears of rent owing. They sought a standard order in order to relieve the stress of non-payment.
12. We 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.
13. In particular, we found the Tenants' evidence regarding money/income received from December 2022 (month in which the N4 Notice was issued) through to October 2023 (month in which the hearing was held) to be inconsistent and therefore they failed to demonstrate their ability to repay the arrears and pay the rent as it falls due. The Tenants inability to answer questions regarding their income, as well as their failure to provide details surrounding their new employment, leads us to conclude that they cannot afford to live in this rental unit.

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:**
 - \$14,849.54 if the payment is made on or before November 20, 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 Tenants have paid the full amount owing as ordered plus any additional rent that became due after November 20, 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 20, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$11,515.71. 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 Tenants shall also pay the Landlord compensation of \$49.35 per day for the use of the unit starting October 24, 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 20, 2023, the Tenants will start to owe interest. This will be simple interest calculated from November 21, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 20, 2023, then starting November 21, 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 21, 2023.

November 9, 2023
Date Issued

Brett Lockwood
Member, Landlord and Tenant Board

Nicola Mulima

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 21, 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 20, 2023

Rent Owing To November 30, 2023	\$17,863.54
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$3,200.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$14,849.54

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

Rent Owing To Hearing Date	\$15,996.61
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$3,200.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,391.38
Less the amount of the interest on the last month's rent deposit	- \$75.52
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total amount owing to the Landlord	\$11,515.71
Plus daily compensation owing for each day of occupation starting October 24, 2023	\$49.35 (per day)