



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

**Citation:** Amer v Romero, 2023 ONLTB 72404

**Date:** 2023-11-09

**File Number:** LTB-L-043118-23

**In the matter of:** 3227 ALPACA AVENUE  
MISSISSAUGA ON L5M7V3

**Between:** Marwan Amer  
Anwar Amer Landlords

**and**

Laura Romero  
Daniel Romero Tenants

Marwan Amer and Anwar Amer (the 'Landlords') applied for an order to terminate the tenancy and evict Laura Romero and Daniel Romero (the 'Tenants') because the Tenants did not pay the rent that the Tenant owe.

This application was heard by videoconference on October 24, 2023.

The Landlord's Legal Representative, Cheryl Martinez-Ostler, the Landlords, and the Tenant, Laura Romero, on behalf of both Tenants, attended the hearing. Adam Amer testified on behalf of the Landlords.

### **Determinations:**

#### *Preliminary Issue – Adjournment Request*

1. At the hearing, LR requested an adjournment to have this matter heard together with her T2 and T6 applications that she has filed with the Board. Those applications have not yet been scheduled to be heard.
2. Rule 1.6 (c) of the Board's Rules of Practice that states the Board may hear applications together where it is fair to do so in the circumstances. The Tenant did not provide any reasons or submissions to suggest that the parties would be relying on the same evidence

or that there were overlapping issues such that hearing the applications separately could result inconsistent findings. I reviewed both of the Tenants' applications and do not find that any of the issues set out in the Tenants' applications overlap with the issues in this application. Therefore, I denied LR's request to have the applications heard together and the Tenants' request to adjourn on that basis.

3. LR then sought to have the hearing adjourned as she alleged that the Landlord did not serve all documents on the Tenants. The Landlord's Legal Representative submitted that all evidence the Landlords intended to rely on at the hearing had been served on the Tenants on October 19, 2023 and were filed with the Board the same day. The Tenant did not provide any particulars or specifics of which documents had not been received by the Tenants.
4. The adjournment request was denied because the arrears are substantial and LR was instructed to raise her objection during the hearing if the Landlords presented a document that the Tenants had not received.

#### *The N4 Notice*

5. The Landlords 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.
6. As of the hearing date, the Tenants were still in possession of the rental unit.
7. There was no dispute that the lawful rent is \$4,351.60. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$143.07. This amount is calculated as follows:  $\$4,351.60 \times 12$ , divided by 365 days.
9. There was no dispute that the Tenants have not made any payments since the application was filed.
10. LR initially sought to dispute the amount of arrears the Landlords alleged are owing on the basis that the Tenants paid an additional \$8,600.00 deposit when they moved into the rental unit that should be applied to the arrears. However, after AA testified that the second deposit of \$8,600.00 was applied to the rent for July 2022 and August 2022, LR agreed.
11. Based on the evidence presented, I find that the rent arrears owing to October 31, 2023 are \$30,461.20.
12. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

13. There was no dispute that the Landlords collected a rent deposit of \$4,300.00 from the Tenants and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
14. Interest on the rent deposit, in the amount of \$187.67 is owing to the Tenants for the period from July 20, 2021 to October 24, 2023.

### Section 83

15. Section 83(3)(a) of the *Residential Tenancies Act, 2006* (the 'Act') states that the Board must refuse to grant an eviction application where satisfied that “the landlord is in serious breach of the landlord’s responsibilities under this Act or of any material covenant in the tenancy agreement”. In order for this section to apply, the breach must be significant in its impact on the Tenants and it must be ongoing as of the date of the hearing.
16. The Tenant raised the issue that the Landlords have been withholding vital services, which I have considered under section 83(3)(a) of the Act.
17. LR testified that the Landlords began cutting the vital services in the summer. LR testified that as of the date of the hearing, the Tenants have water and hydro and LR is not alleging that they are currently without vital services at the time of the hearing. While these issues may constitute a breach of the Landlord’s obligations under section 21(1) of the Act, in my view, these are not serious and ongoing breaches of the Landlords’ responsibilities under the Act within the meaning of section 83(3)(a) of the Act as the Landlords are not currently withholding vital services.
18. The Landlords are seeking a standard termination order. The Landlord’s Legal Representative submitted that AA and the LR exchanged numerous text messages regarding the arrears, however, LR stated that she intended to wait for the hearing and did not make any rent payments.
19. The Tenants are seeking to preserve the tenancy. LR testified that the Tenants can pay \$1,000.00 towards the arrears, in addition to the full rent each month, until the arrears are paid off.
20. I find that it would be unfair in the circumstances to impose LR’s requested repayment for two reasons.
21. First, the Tenants have not made any payments towards the rent or arrears since March 2023. LR testified that she was deliberately withholding payments due to disagreements with the Landlords on the amount owing as well as disagreements regarding the payment of utilities bills. LR testified that the Tenants spent the rent monies they were withholding when the Landlords started cutting vital services.
22. Second, the length of time it would take to pay off the arrears under the proposed repayment plan, 31 months, is unreasonable and prejudicial to the Landlords.

23. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, including that LR's husband has a health condition and is awaiting a heart transplant, find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. I have declined to postpone the eviction as the arrears are substantial, the Tenants have not made any payments to the Landlords in more than 7 months, and the Landlords have been waiting some time for repayment.

**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:**
  - **\$34,998.80** if the payment is made on or before November 20, 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 November 20, 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 November 20, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord **\$25,241.61**. 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 **\$143.07** per day for the use of the unit starting October 25, 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 November 20, 2023, the Tenant 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**

Candace Aboussafy

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 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 Tenant 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	\$34,812.80
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>\$34,998.80</b>

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

Rent Owing To Hearing Date	\$29,543.28
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	- \$4,300.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$187.67
<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00

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<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>\$25,241.61</b>
Plus daily compensation owing for each day of occupation starting October 25, 2023	\$143.07 (per day)