



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

**Citation:** PUNJABI BROS AUTO INC. v Francis Berkinshaw, 2023 ONLTB 69573

**Date:** 2023-10-27

**File Number:**  
LTB-L-028119-23

**In the matter of:** 31 MORRISH RD  
SCARBOROUGH ON M1C1E6

**Between:** PUNJABI BROS AUTO INC. Landlord

**And**

Sarah Francis Berkinshaw Tenant

PUNJABI BROS AUTO INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Sarah Francis Berkinshaw (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 10, 2023.

The Landlord attended the hearing and was represented by Naseer Ahmed, Paralegal.

As of 1:30pm, the Tenant was 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.

### **Preliminary:**

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). That N4 covered arrears for the period July 1, 2022 through March 31, 2022. However, the Landlord's L1 application (filed on April 6, 2023) did not seek payment of those arrears. Instead, it sought arrears of rent for April 2023 only.
2. There is no question that by April 6, 2023, April 2023 was also do, and therefore also

(implicitly) the proper subject of the L1 application. However, for whatever reason, the Landlord did not also seek payment of the earlier arrears in his application, as it was served on the Tenant.

3. Rule 15.4 of the Board's rules of procedure permit the amendment of an application at the hearing, but only if it would "not prejudice any party and is consistent with a fair ... proceeding. Because the Tenant was not in attendance, there was no way to amend the application – to seek amounts beyond those set out in the application – without creating prejudice to the Tenant.
4. We therefore presented the Landlord with a choice: (i) he could adjourn the hearing, to prepare an amended application, serve that on the Tenant, and then return a different day, or (ii) proceed today, but only on the relief sought in his application as it stands today. The Landlord elected to proceed today, and explicitly acknowledged that a consequence of doing so is that he will not ever be able to seek the arrears prior to April 2023. We proceeded on that basis.

**Determinations:**

5. The Tenant did not void the N4 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 Tenant was still in possession of the rental unit.
7. The lawful rent is \$1,600.00. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$52.60. This amount is calculated as follows: \$1,600.00 x 12, divided by 365 days.
9. The Tenant has not made any payments since the application was filed.
10. The rent arrears owing to October 31, 2023 are \$11,200.00.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. There is no last month's rent deposit.
13. 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.

**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:**

- \$11,386.00 if the payment is made on or before October 31, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

- \$12,986.00 if the payment is made on or before November 6, 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 6, 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 6, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$10,312.00. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$52.60 per day for the use of the unit starting October 11, 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 6, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 7, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 6, 2023, then starting November 7, 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 7, 2023.

**October 27, 2023**

**Date Issued**

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Jonathan Rosenstein

Member, Landlord and Tenant Board

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Fabio Quattrociochi

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 7, 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 October 31, 2023**

Rent Owing To October 31, 2023	\$11,200.00
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>\$11,386.00</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before November 6, 2023**

Rent Owing To November 30, 2023	\$12,800.00
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>\$12,986.00</b>

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

Rent Owing To Hearing Date	\$10,126.00
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 of the last month's rent deposit	- \$0.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord</b>	<b>\$10,312.00</b>
Plus daily compensation owing for each day of occupation starting October 11, 2023	\$52.60 (per day)