



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

**Citation:** Dyck v Guenther, 2023 ONLTB 69636

**Date:** 2023-10-25

**File Number:**  
LTB-L-034405-23

**In the matter of:** 119 SATINWOOD CRES  
Leamington ON N8H4P1

**Between:** Helena Dyck and Isaak Dyck

Landlords

**And**

Benny Guenther

Tenant

Helena Dyck and Isaak Dyck (the 'Landlords') applied for an order to terminate the tenancy and evict Benny Guenther (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 11, 2023. The Landlords, the Landlords' legal representative, M. Di Risio, and the Tenant attended the hearing.

### **Determinations:**

1. The Landlords 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 \$1,800.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$59.18. This amount is calculated as follows: \$1,800.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to October 31, 2023 are \$25,200.00. The Tenant disputed that any arrears are outstanding as he had been paying money to the Landlords' friends and family

in cash. The Landlords denied that any of their friends or family collected cash from the Tenant.

7. Once a landlord denies receiving funds, the Tenant has an evidentiary burden to prove that he paid rent as only the Tenant can prove payment as a positive fact. The Tenant produced no evidence, such as bank records showing that \$1,800.00 in cash had been withdrawn, to show that he paid the Landlords in cash. Although the legal burden rests with the Landlord, I do not find that the Tenant adduced evidence to counter or overcome the Landlord's evidence.
8. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlords collected a rent deposit of \$1,800.00 from the Tenant 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.
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 Landlords attempted to negotiate a repayment agreement with the Tenant and find that it would not be unfair to postpone the eviction until November 30, 2023 pursuant to subsection 83(1)(b) of the Act.
11. The Tenant has resided in the unit for six years. He had no payment plan suggestion. However, he requested that if the tenancy was terminated, that he would be provided an extended termination date so that he could apply for housing with the City of Windsor. While the Landlords submitted that they are experiencing financial hardship, I find it would not be unfair to postpone termination of the tenancy by one month to provide the Tenant with some time to organize his move. A longer delay will not be granted as the arrears are substantial.

**It is ordered that:**

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**
  - \$25,386.00 if the payment is made on or before October 31, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$27,186.00 if the payment is made on or before November 30, 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 30, 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 30, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlords \$22,436.98. 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 Landlords 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 Landlords compensation of \$59.18 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 Landlords the full amount owing on or before November 5, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 6, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 30, 2023, then starting December 1, 2023, the Landlords 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 Landlords on or after December 1, 2023.

2023 ONLTB 69636 (CanLII)

**October 25, 2023**

**Date Issued**

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Camille Tancioco

Member, Landlords 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 1, 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	\$25,200.00
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Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlords 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 Landlords 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>\$25,386.00</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 30, 2023**

Rent Owing To November 30, 2023	\$27,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlords 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 Landlords 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>\$27,186.00</b>

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

Rent Owing To Hearing Date	\$24,050.98
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlords 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	- \$1,800.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$0.00
<b>Less</b> the amount the Landlords 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 Landlords</b>	<b>\$22,436.98</b>
Plus daily compensation owing for each day of occupation starting October 12, 2023	\$59.18 (per day)