



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Hergott v Barrie, 2023 ONLTB 67347

**Date:** 2023-10-10

**File Number:** LTB-L-020843-23

**In the matter of:** Unit C Main Floor, 303 ONTARIO ST Stratford  
ON N5A3H6

**Between:** Leeann Hergott and Tyson James Hergott Landlord

**And**

Patricia Barrie Tenant

Leeann Hergott and Tyson James Hergott (the 'Landlord') applied for an order to terminate the tenancy and evict Patricia Barrie (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on September 25, 2023. the

Landlord's legal representative James Roussy attended the hearing.

As of 2:27 pm, 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.

### **Determinations:**

#### Preliminary Issue – Certificate of Service

1. On the date of the hearing, the Landlord's legal representative clarified an administrative error on the Certificate of Service (COS) where he personally issued the COS and N4 notice and inadvertently indicated on the COS that the Tenant received the N4 notice on 02/09/2023 and it should have read 09/02/2023. I was satisfied the N4 was served to the Tenant on 09/02/2023 and compliant with all requirements.
2. The Landlord 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.

3. As of the hearing date, the Tenant was still in possession of the rental unit.
4. The lawful rent is \$950.00. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$31.23. This amount is calculated as follows: \$950.00 x 12, divided by 365 days.
6. The Tenant has not made any payments since the application was filed.
7. The rent arrears owing to September 30, 2023 are \$9,950.00.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$950.00 from the Tenant 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.
10. Interest on the rent deposit, in the amount of \$37.80 is owing to the Tenant for the period from February 22, 2022 to September 25, 2023.
11. The Landlord's agent said the Tenant was provided with an opportunity to discuss a payment plan but the Tenant did not respond. This is a short tenancy and the Landlord's agent has no knowledge of the Tenant's circumstances or any reason to delay or deny the request to terminate the tenancy via a standard order.
12. 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 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:**
  - \$11,086.00 if the payment is made on or before October 21, 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 October 21, 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 October 21, 2023**

5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$8,978.95. 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 \$31.23 per day for the use of the unit starting September 26, 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 October 21, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 22, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before October 21, 2023, then starting October 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 October 22, 2023.

**October 10, 2023**

**Date Issued**

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Dana Wren

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 April 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before October 21, 2023**

Rent Owing To October 31, 2023	\$10,900.00
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>\$11,086.00</b>

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

Rent Owing To Hearing Date	\$9,780.75
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	- \$950.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$37.80
<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>\$8,978.95</b>
Plus daily compensation owing for each day of occupation starting September 26, 2023	\$31.23 (per day)