



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Xu v Benayon, 2023 ONLTB 64939

**Date:** 2023-09-28

**File Number:** LTB-L-030377-23

**In the matter of:** 94 DRIZZEL CRES  
RICHMOND HILL ON L4E1G8

**Between:** Huifen Xu Landlord

**And**

Albert Benayon and Jessica Benayon Tenants

Huifen Xu (the 'Landlord') applied for an order to terminate the tenancy and evict Albert Benayon and Jessica Benayon (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on August 14, 2023.

The Landlord and the Tenant Albert Benayon attended the hearing.

### Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The method of service of “sticking the document on the door of the rental unit and notifying the Tenants by text messages” is not a method permitted by the *Residential Tenancies Act, 2006* (the “Act”). However, I am satisfied that the Tenants received the document based on Mr. Benayon’s answer that he received it when he got home possibly late in the day on March 14. Therefore, the N4 notice is deemed to have been validly served pursuant to section 191(2) of the Act.
2. 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.
3. As of the hearing date, the Tenants were still in possession of the rental unit.
4. The lawful rent is \$2,750.00. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$90.41. This amount is calculated as follows: \$2,750.00 x 12, divided by 365 days.
6. The Tenants have not made any payments since the application was filed.
7. The rent arrears owing to August 31, 2023 are \$30,650.00.
8. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.

9. The Landlord collected a rent deposit of \$2,750.00 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.
10. Interest on the rent deposit, in the amount of \$159.24 is owing to the Tenants for the period from August 31, 2019 to August 14, 2023.

### Relief from Eviction

11. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act including whether the Landlord attempted to negotiate a repayment agreement with the Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
12. I have considered the Tenants' proposed payment plan for \$1,000 payments towards the arrears each month but find it would be unfair to the Landlord for the following reasons:
13. First, the rent arrears were \$30,650.00 on the date of the hearing.
14. Second, no payments have been made since the application was filed. Meanwhile, both Tenants have been working and earning income since at least late June (2 months before the hearing) according to their pay stubs. I find that they have simply not prioritized paying the rent as further discussed in reason 5. This is not a circumstance that warrants relief from eviction.
15. Third, the proposed payment plan term is for 30 months for a significant amount of arrears nearing the Board's monetary jurisdiction. This is significantly prejudicial to the Landlord.
16. Fourth, the Landlord already tried to negotiate a repayment plan with the Tenants in December 2022 when the arrears were around \$11,000 to no avail.
17. Fifth, the Tenant Mr. Benayon submitted that the reason for the arrears is that he lost \$20,000 gambling and then another \$7,000 after this initial loss. While I would be able to look past this issue based on Mr. Benayon's testimony that he stopped gambling, his *monthly* account activity for April 2022 reveals significant spending on discretionary items such as restaurant meals rather than rent payments being made to the Landlord.
18. This is clearly not a circumstance that warrants relief from eviction. The Landlord's application claimed rent arrears from August 1, 2020 (i.e. 1.5 years before April 2022). The Tenants are earning income and eating out multiple times per day among other discretionary expenses, but the Landlord has not received a single rent payment since the application was filed. Based on the Tenants' spending habits and in light of the above reasons, it is obviously unfair to the Landlord to impose a payment plan and grant relief from eviction.

### **It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**

- \$33,601.00 if the payment is made on or before September 30, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

- \$36,351.00 if the payment is made on or before October 9, 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 October 9, 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 October 9, 2023.**
  5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$26,457.50. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
  6. The Tenants shall also pay the Landlord compensation of \$90.41 per day for the use of the unit starting August 15, 2023 until the date the Tenants move out of the unit, up to a maximum \$35,186.00 for the rent arrears, daily compensation, and application fee.
  7. If the Tenants do not pay the Landlord the full amount owing on or before October 9, 2023, the Tenants will start to owe interest. This will be simple interest calculated from October 10, 2023 at 6.00% annually on the balance outstanding.
  8. If the unit is not vacated on or before October 9, 2023, then starting October 10, 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 10, 2023.

**September 28, 2023**

**Date Issued**

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Elan Shemtov

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 10, 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 September 30, 2023**

|   |                    |
|---|--------------------|
| Rent Owing To September 30, 2023  | \$33,400.00        |
| Application Filing Fee  | \$201.00           |
| NSF Charges   | \$0.00             |
| <b>Less</b> the amount the Tenants paid to the Landlord since the application was filed | - \$0.00           |
| <b>Less</b> the amount the Tenants paid into the LTB since the application was filed    | - \$0.00           |
| <b>Less</b> the amount the Landlord owes the Tenants for an{abatement/rebate}           | - \$0.00           |
| <b>Less</b> the amount of the credit that the Tenants are entitled to                   | - \$0.00           |
| <b>Total the Tenants must pay to continue the tenancy</b>                               | <b>\$33,601.00</b> |

**B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before October 9, 2023**

|   |                    |
|---|--------------------|
| Rent Owing To October 31, 2023  | \$36,150.00        |
| Application Filing Fee  | \$201.00           |
| NSF Charges   | \$0.00             |
| <b>Less</b> the amount the Tenants paid to the Landlord since the application was filed | - \$0.00           |
| <b>Less</b> the amount the Tenants paid into the LTB since the application was filed    | - \$0.00           |
| <b>Less</b> the amount the Landlord owes the Tenants for an{abatement/rebate}           | - \$0.00           |
| <b>Less</b> the amount of the credit that the Tenants are entitled to                   | - \$0.00           |
| <b>Total the Tenants must pay to continue the tenancy</b>                               | <b>\$36,351.00</b> |

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

|   |              |
|---|--------------|
| Rent Owing To Hearing Date  | \$29,165.74  |
| Application Filing Fee  | \$201.00     |
| NSF Charges   | \$0.00       |
| <b>Less</b> the amount the Tenants paid to the Landlord since the application was filed | - \$0.00     |
| <b>Less</b> the amount the Tenants paid into the LTB since the application was filed    | - \$0.00     |
| <b>Less</b> the amount of the last month's rent deposit                                 | - \$2,750.00 |
| <b>Less</b> the amount of the interest on the last month's rent deposit                 | - \$159.24   |
| <b>Less</b> the amount the Landlord owes the Tenants for an {abatement/rebate}          | - \$0.00     |

|   |                      |
|---|----------------------|
| <b>Less</b> the amount of the credit that the Tenants are entitled to             | - \$0.00             |
| <b>Total amount owing to the Landlord</b>   | <b>\$26,457.50</b>   |
| Plus daily compensation owing for each day of occupation starting August 15, 2023 | \$90.41<br>(per day) |