



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

**Citation:** TORONTO COMMUNITY HOUSING CORP v Millan, 2023 ONLTB 27047

**Date:** 2023-09-15

**File Number:** LTB-L-047797-22

**In the matter of:** 228 BAY MILLS BLVD  
Toronto ON M1T2G7

**Between:** TORONTO COMMUNITY HOUSING CORP Landlord

**And**

Bryan Millan and April Mackinnon Tenant

TORONTO COMMUNITY HOUSING CORP (the 'Landlord') applied for an order to terminate the tenancy and evict Bryan Millan and April Mackinnon (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 15, 2023.

The Landlord's representative Dale Maingot and the Tenant attended the hearing.

### **Preliminary Issue:**

1. At the hearing, the Tenant requested an adjournment because he needed time to provide his financial documentation to the Landlord to determine his eligibility for Rent Geared to Income ("RGI") and did not receive any rent arrears notice from the Landlord.
2. The Landlord's Legal Representative opposed the adjournment request as the Notice of Hearing was sent to the parties on February 01, 2023. On January 27, 2020, the Tenant was served a Notice to End Tenancy Early for Non-Payment of Rent ("N4") for an arrears balance of \$1,060.00.
3. Section 183 of the *Residential Tenancies Act, 2006* (the 'Act') directs the Board to "adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and to be heard on the matter." Parties should

therefore assume that their evidence and submissions will usually be heard on the date stated in the Notice of Hearing. This means that the parties should be prepared to present their evidence, call, and question witnesses and make their submissions.

4. The Landlord filed this application to the Board on August 24, 2022. The Board mailed the notice of hearing to the parties, including the Tenant, on February 01, 2023.

Based on the evidence, I find that the Tenant had a considerable amount of time between August 24, 2022, when the application was filed to the Board, and the present hearing date of March 15, 2023, to contact the Landlord and recalculate the RGI. As a result, I find that the Tenant did not meet his onus to demonstrate on the balance of probabilities that he made all reasonable efforts to submit his financial documentation to the Landlord to determine the rent arrears before the hearing. The Tenant's adjournment request is denied.

### **Determinations:**

1. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$2,253.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$74.07. This amount is calculated as follows:  $\$2,253.00 \times 12$ , divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
7. There is no last month's rent deposit.
8. The parties disagreed over the outstanding rent arrears. The Landlord stated that the total arrears from January 01, 2019, up to March 31, 2023, was \$20,770.00 and that no payments had been made to the Landlord since the application was filed.
9. In response, the Tenant agreed that she had not paid her rent in November 2020 but said that the arrears were not due to rent but parking charges incurred while he was not using the parking spot as he did not have a vehicle at that time and did not have access to his parking spot since the parking garage was under construction starting in January 2019.
10. The Landlord explained that at the time of referral, the Tenant was being charged rent at the Rent Geared to Income ("RGI") rate of \$510.00, plus \$50.00 per month for parking based on his income from Ontario Works. The arrears began accumulating in January

2019, when the monthly rent was not paid to TCHC. The Landlord explained that TCHC assigned a new parking spot to the Tenant during the construction period and was responsible for paying the parking arrears. The Landlord explained that the Tenant never informed the Landlord about cancelling the parking.

11. The Tenant conceded that he did not notify the Landlord to cancel the parking when he no longer required it. The Tenant claims that the Landlord should cancel the parking fees and not just the partial amount after he informed him to cancel the parking. The Tenant claims that the parking is not part of the rent and, as such, he only owes rent from August 2022 to March 01, 2023, \$17,514.00.
12. As the applicant in this proceeding, the Landlord provided an L1/L9 update sheet to the Board as evidence of the current state of accounts in this tenancy. The evidence shows that on January 27, 2020, the Tenant was served a Notice to End Tenancy Early for NonPayment of Rent ("N4") for an arrears balance of \$1,060.00. The evidence also shows that between September 2019 and January 2020, the Landlord sent letters concerning the rent arrears.
13. On a balance of probabilities, I am satisfied that the Landlord correctly calculated the rent arrears owed from January 01, 2019, to March 31, 2023. In making this finding, I considered the clear, concise, and detailed evidence of the Landlord, which establishes the arrears of rent owed. I find the Tenants' evidence was vague and lacked details to establish his claim that the Landlord only accounts for the unpaid parking fees and did not account for all the partial payments of rent he believed he made, which would result in the Landlord's calculations of arrears of rent being incorrect. The evidence shows that the arrears began accumulating in January 2019, when the monthly rent was not paid to the Landlord. The evidence provided did not substantiate that unpaid parking fees caused the arrears.
14. The Tenant bears the burden of proving that the arrears are related to parking fees. While the legal responsibility falls on the Landlord, I did not find any evidence presented by the Tenant that would convincingly counter or overcome the Landlord's evidence. As such, I find that the Tenant did not make any payment after the application was filed.
15. 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:**

- \$34,288.00 if the payment is made on or before September 26, 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 September 26, 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 September 26, 2023**
  5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$19,628.05. 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 \$74.07 per day for the use of the unit starting March 16, 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 September 26, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 27, 2023 at 5.00% annually on the balance outstanding.
  8. If the unit is not vacated on or before September 26, 2023, then starting September 27, 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 September 27, 2023.

2023 ONLTB 27047 (CanLII)

**September 15, 2023**

**Date Issued**

---

Percy Laryea

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 March 27, 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 September 26, 2023**

Rent Owing To September 30, 2023	\$34,102.00
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>\$34,288.00</b>

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

Rent Owing To Hearing Date	\$19,442.05
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	- \$
<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>\$19,628.05</b>
Plus daily compensation owing for each day of occupation starting March 16, 2023	\$74.07 (per day)