



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

**Citation:** Teixeira v Hennebry, 2023 ONLTB 61590

**Date:** 2023-09-14

**File Number:** LTB-L-009888-23

**In the matter of:** 9 THE GREENWAY  
CAMBRIDGE ON N1R6L4

**Between:** John Teixeira and Linda Mitchell

Landlords

**And**

Dawna Hennebry and Shane Hennebry

Tenants

John Teixeira and Linda Mitchell (the 'Landlords') applied for an order to terminate the tenancy and evict Dawna Hennebry and Shane Hennebry (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on August 30, 2023.

The Landlord John Teixeira and the Tenant Dawna Hennebry attended the hearing.

As of 11:28am, the Tenant Shane Hennebry was not present but Dawna Hennebry stated that she had authority to represent him in this hearing as she is his wife.

At the hearing, the Tenants consented to a standard order. I have still included the determinations as the rent arrears were contested.

**Determinations:**

1. The Landlords served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). 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.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$1,576.45. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$51.83. This amount is calculated as follows: \$1,576.45 x 12, divided by 365 days.
5. The Tenants have paid \$1,538.00 to the Landlords since the application was filed.

6. The rent arrears owing to August 31, 2023 are \$13,957.35.
7. The Landlords incurred costs of \$186.00 for filing the application and are entitled to reimbursement of those costs.
8. The Landlords collected a rent deposit of \$1,495.00 from the Tenants 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.
9. Interest on the rent deposit, in the amount of \$111.94 is owing to the Tenants for the period from October 1, 2018 to August 30, 2023.
10. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act*, 2006 (the 'Act'), including whether the Landlords 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. At the hearing, the Tenants consented to a standard order and stated they wanted to leave the rental unit (i.e. they were not seeking any relief from eviction).

#### Section 82 issues

11. At the hearing, I declined to hear the s. 82 issues raised by Ms. Hennebry because they were not disclosed 7 days before the hearing. Ms. Hennebry stated that she had uploaded the required form on the portal but I did not see it both before and during the hearing. I did not accept this explanation for not making proper disclosure. Even if I did and allowed Ms. Hennebry to raise these issues, there was no evidence uploaded either so she would not have been able to establish the claims. Ms. Hennebry can file a Tenant's application for these issues with a full evidentiary record and advance notice to the Landlord.

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

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**
  - \$15,719.80 if the payment is made on or before September 25, 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 September 25, 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 September 25, 2023.**

5. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$12,514.86. 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 owe 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 Landlords compensation of \$51.83 per day for the use of the unit starting August 31, 2023 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlords the full amount owing on or before September 25, 2023, the Tenants will start to owe interest. This will be simple interest calculated from September 26, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before September 25, 2023, then starting September 26, 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 September 26, 2023.

**September 14, 2023**

**Date Issued**

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 March 26, 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 25, 2023**

Rent Owing To September 30, 2023	\$17,071.80
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlords since the application was filed	- \$1,538.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlords owe 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>\$15,719.80</b>

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

Rent Owing To Hearing Date	\$15,473.80
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlords since the application was filed	- \$1,538.00
<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	- \$1,495.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$111.94
<b>Less</b> the amount the Landlords owe 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 Landlords</b>	<b>\$12,514.86</b>
Plus daily compensation owing for each day of occupation starting August 31, 2023	\$51.83 (per day)