



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

**Citation:** AMSTAR POOL I LP v Neil, 2023 ONLTB 58319

**Date:** 2023-08-24

**File Number:** LTB-L-075157-22

**In the matter of:** 1416, 2737 KIPLING AVE  
ETOBICOKE ON M9V4C3

**Between:** AMSTAR POOL I LP Landlord

**And**

Aneka Neil and Kamesha Campbell Tenantss

AMSTAR POOL I LP (the 'Landlord') applied for an order to terminate the tenancy and evict Aneka Neil and Kamesha Campbell (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

This application was heard by videoconference on August 16, 2023. The Tenant, Kamesha Campbell, attended the hearing. The Landlord was represented at the hearing by Sofia Enriquez.

**Determinations:**

1. The Landlord 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 \$1,543.90. It is due on the 1st day of each month.
4. The rent arrears owing to August 31, 2023, are \$5,370.85
5. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

*Relief from Eviction*

- 6. The Tenants do dispute the amount of rent arrears. The issue before the Board is whether it is appropriate to grant relief from eviction pursuant to s.83 of the *Residential Tenancies Act 2006*, (the 'Act')
- 7. According to s. 83 of the Act when the Board hears an application for an order evicting a Tenants, the Board must consider whether there are any circumstances that support granting relief from eviction.

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- 8. The Tenants proposed to pay \$500.00 per month toward the arrears. The Landlord does not believe the Tenants will be able to comply with the requested payment plan.
- 9. The Act is remedial legislation and the courts have determined that evicting a Tenants is a remedy of last resort. In the cases of *Sutherland v. Lamontagne*, [2008] O.J. No. 5763 (Div. Ct.) and *Paderewski Society v. Ficyk*, [1998], the Divisional Court stated, "to put somebody out of their home must, in my view, call for clear and compelling circumstances that it's no longer possible for the arrangement to continue." I find that the circumstances in this application do not rise to that level.
- 10. I find that it would not be unfair to grant the Tenants' request. While the arrears are substantial, the Tenants' payment plan seems realistic and not unduly length. Based on the Tenants' income I am satisfied that the Tenants will be able to keep up with the payments, allowing the Tenants to stay in the rental unit.
- 11. I find that a conditional order allowing the Tenants' payment plan balances the prejudice to each of the parties and it would preserve the tenancy.
- 12. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

**It is ordered that:**

- 1. The Tenant shall pay to the Landlord \$5,556.85 which represents the arrears of rent and costs outstanding for the period ending August 31, 2023.
- 2. The Landlord's application for eviction is denied on the condition Tenant shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:

Date Payment Due	Payment Amount
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The 20 <sup>th</sup> day of each month beginning September 20, 2023, and ending June 20, 2024	\$2018
July 20, 2024	\$556.85

3. The Tenant shall also pay to the Landlord new rent on time and in full as it comes due and owing for the period September 30, 2023, to July 31, 2023, or until the arrears are paid in full, whichever date is earliest.
4. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the **File Number: LTB-L-075157-22**

Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after August 31, 2023.

**August 24, 2023**

**Date Issued**

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Bryan Delorenzi

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.