



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** AMSTAR POOL I LP v Emptage, 2023 ONLTB 58617

**Date:** 2023-08-21

**File Number:** LTB-L-074621-22

**In the matter of:** 1105, 2757 KIPLING AVE  
Toronto ON M9V4C4

**Between:** AMSTAR POOL I LP Landlord

**And**

Lennard Emptage and Adana Richards Tenants

AMSTAR POOL I LP (the 'Landlord') applied for an order to terminate the tenancy and evict Lennard Emptage and Adana Richards (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on August 16, 2023. The Tenants attended the hearing. The Landlord was represented at the hearing by Christine Daniel.

### Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment 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 \$2,344.87. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$77.09. This amount is calculated as follows: \$2,344.87 x 12, divided by 365 days.
5. The Tenants have paid \$5,221.25 to the Landlord since the application was filed.
6. The rent arrears owing to August 31, 2023, are \$15,011.61.
7. The Landlord is entitled to \$40.00 to reimburse the Landlord for administration charges and \$10.00 for bank fees the Landlord incurred because of 2 cheque given by or on behalf of the Tenants which was returned NSF.
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 \$2,155.00 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 \$11.37 is owing to the Tenants for the period from June 1, 2023, to August 16, 2023.

*Relief from Eviction*

11. The Tenants do not 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').
12. According to s.83 of the Act when the Board hears an application for an order evicting a tenant, the Board must consider whether there are any circumstances that support granting relief from eviction.
13. The Tenants want to stay in the unit. However, the arrears are substantial. Their monthly expenses exceed their current monthly income. Given the circumstances, I do not find there is a payment plan that would realistically preserve the tenancy. Accordingly, I find it would be unfair to deny eviction.
14. I do find a slight delay in eviction to be appropriate. This will give the Tenants ample time to find a new place to live that is within their monthly budget.
15. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until November 30, 2023, pursuant to subsection 83(1)(b) of the Act.

**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:**
  - \$15,247.61 if the payment is made on or before August 31, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$17,592.48 if the payment is made on or before September 30, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$19,937.35 if the payment is made on or before October 31, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

- \$22,282.22 if the payment is made on or before November 30, 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 November 30, 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 November 30, 2023**
  5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$11,969.81. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. 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 \$77.09 per day for the use of the unit starting August 17, 2023, until the date the Tenants moves out of the unit.
  7. If the Tenants does not pay the Landlord the full amount owing on or before September 1, 2023, the Tenants will start to owe interest. This will be simple interest calculated from September 2, 2023, at 6.00% annually on the balance outstanding.
  8. If the unit is not vacated on or before November 30, 2023, then starting December 1, 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 December 1, 2023.

**August 21, 2023**  
**Date Issued**

\_\_\_\_\_  
Bryan Delorenzi  
Member, Landlord and Tenants 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 June 1, 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 August 31, 2023**

Rent Owing To August 31, 2023	\$20,232.86
Application Filing Fee	\$186.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$5,221.25
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$15,247.61</b>

**B. 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	\$22,577.73
Application Filing Fee	\$186.00
NSF Charges	\$50.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$5,221.25
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$17,592.48</b>

**C. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before October 31, 2023**

Rent Owing To October 31, 2023	\$24,922.60
Application Filing Fee	\$186.00
NSF Charges	\$50.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$5,221.25
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$19,937.35</b>

**D. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before November 30, 2023**

Rent Owing To November 30, 2023	\$27,267.47
Application Filing Fee	\$186.00
NSF Charges	\$50.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$5,221.25
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$22,282.22</b>

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

Rent Owing To Hearing Date	\$19,121.43
Application Filing Fee	\$186.00
NSF Charges	\$50.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$5,221.25
<b>Less</b> the amount of the last month's rent deposit	- \$2,155.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$11.37
LTB-L-074621-22 <b>Total amount owing to the Landlord</b>	<b>\$11,969.81</b>
Plus daily compensation owing for each day of occupation starting August 17, 2023	\$77.09 (per day)