



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

Citation: PASCUZZO v TOBER, 2023 ONLTB 57112

Date: 2023-08-21

File Number: LTB-L-026861-23

In the matter of: 1, 8793 WILLOUGHBY DRIVE NIAGARA
FALLS ON L2G6X6

Between: LUCY PASCUZZO Landlord

And

TONY TOBER Tenant

LUCY PASCUZZO (the 'Landlord') applied for an order to terminate the tenancy and evict TONY TOBER (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 19, 2023.

The Landlord, the Landlord's Agent Tony Pascuzzo (the Landlord's son) and the Tenant attended the hearing.

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 \$950.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$31.23. This amount is calculated as follows: \$950.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to June 30, 2023 are \$3,800.00.

7. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$935.00 from the Tenant 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.
9. Interest on the rent deposit, in the amount of \$116.88 is owing to the Tenant for the period from September 1, 2015 to June 19, 2023.

Relief from Eviction

10. The Tenant has resided in the rental unit since 2015. He testified that he applied for ODSP benefits in June 2022 and that he is still awaiting a response. He stated that he would require until the end of July to vacate the rental unit if required by the Board to do so.
11. The Landlord is a senior citizen who relies on the income from the rental property. While she does not have a mortgage, she has expenses for property taxes and insurance, and when she attempted to discuss the arrears with the Tenant, she received no response. It is her position that the Tenant is unable to afford the 3-bedroom house on his income.
12. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenant has not made any payments at all since the application was filed, despite informing the Board that he has an income that would permit at least partial payments as a show of good faith.
13. Due to the date of this order, the Tenant will have benefitted from over 2 months to explore options for his tenancy.

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:**
 - \$5,901.00 if the payment is made on or before August 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$6,851.00 if the payment is made on or before September 1, 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 1, 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 1, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$2,592.50. 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 Tenant. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$31.23 per day for the use of the unit starting June 20, 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 1, 2023, the Tenant 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 September 1, 2023, then starting September 2, 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 2, 2023.

August 21, 2023

Date Issued

Margo den Haan

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 2, 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 August 31, 2023

Rent Owing To August 31, 2023	\$5,700.00
Application Filing Fee	\$201.00

Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Total the Tenant must pay to continue the tenancy	\$5,901.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before September 1, 2023

Rent Owing To September 30, 2023	\$6,650.00
Application Filing Fee	\$201.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Total the Tenant must pay to continue the tenancy	\$6,851.00

C. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$3,443.37
Application Filing Fee	\$201.00
NSF Charges	\$0.00
Less the amount of the last month's rent deposit	- \$935.00
Less the amount of the interest on the last month's rent deposit	- \$116.88
Total amount owing to the Landlord	\$2,592.50
Plus daily compensation owing for each day of occupation starting June 20, 2023	\$31.23 (per day)