



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

**Citation:** Mishra v Tabet, 2023 ONLTB 51749

**Date:** 2023-08-01

**File Number:** LTB-L-060903-22

**In the matter of:** BASEMENT - 41 SHEPHERD ST E  
WINDSOR ON N8X2J9

**Between:** Prashant Mishra Landlord

**And**

Elizabeth Jane Tabet Tenant

Prashant Mishra (the 'Landlord') applied for an order to terminate the tenancy and evict Elizabeth Jane Tabet (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes ('L1 Application').

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Landlord requires possession of the rental unit in order to demolish it ('L2 Application').

This application was heard by videoconference on May 31, 2023.

Only the Landlord and the Landlord's legal representative, John Kulikowski ('JK'), attended the hearing.

As of 10:45 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

### **Determinations:**

#### L1 Application

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 \$850.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$27.95. This amount is calculated as follows: \$850.00 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 May 31, 2023 are \$10,550.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$850.00 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.

### L2 Application

9. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy in the L2 Application. Therefore, the L2 Application is dismissed.
10. On September 27, 2022, the Landlord gave the Tenant an N13 notice of termination with a termination date of January 31, 2023. The N13 notice states that the Landlord will demolish the rental unit because the Landlord has been ordered by the City of Windsor to “demolish or convert the illegal basement unit”.
11. The evidence before me was that the City ordered the Landlord to stop permitting the rental unit to be used as a residential rental unit. The City did not order that the rental unit be demolished, and the evidence was that nothing was actually to be done to the rental unit. The Landlord sought eviction, after which the unit would be left vacant in compliance with the City’s order. This is not a demolition, but is rather a conversion to a non-residential use.
12. The Landlord’s N13 was given to the Tenant under section 50(1)(a) of the Act, claiming the rental unit would be demolished, and the L2 application is based on this assertion. I cannot determine that the Landlord in good faith intends to demolish the rental unit, because I do not accept that the rental unit will be demolished.
13. The L2 Application must therefore be dismissed.

Relief from Eviction

14. JK said that the Landlord's property manager reached out to the Tenant verbally on numerous occasions to try to negotiate a payment plan with the Tenant with respect to the rent arrears. The Tenant did not agree to any plan or make any payments to the Landlord. JK said the Tenant lives alone in the rental unit and he was not aware of any other circumstances that should be considered with respect to whether eviction should be delayed or denied.
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 L2 Application is dismissed.
2. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
3. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$13,286.00 if the payment is made on or before August 12, 2023. See Schedule 1 for the calculation of the amount owing.
4. 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 August 12, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
5. **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 August 12, 2023**
6. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$9,886.00. 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.
7. The Tenant shall also pay the Landlord compensation of \$27.95 per day for the use of the unit starting June 1, 2023 until the date the Tenant moves out of the unit.

8. If the Tenant does not pay the Landlord the full amount owing on or before August 12, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 13, 2023 at 6.00% annually on the balance outstanding.
9. If the unit is not vacated on or before August 12, 2023, then starting August 13, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 August 13, 2023.

**August 1, 2023 Date**  
**Issued**

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**Mark Melchers**  
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 February 13, 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 12, 2023**

Rent Owing To August 31, 2023	\$13,100.00
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>\$13,286.00</b>

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

Rent Owing To Hearing Date	\$10,550.00
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 of the last month's rent deposit	- \$850.00
<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>\$9,886.00</b>
Plus daily compensation owing for each day of occupation starting June 1, 2023	\$27.95 (per day)

2023 ONLTB 51749 (CanLII)