



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

Citation: 2464865 Ontario Inc v Nehme, 2023 ONLTB 51791

Date: 2023-07-18

File Number: LTB-L-040282-22

In the matter of: 609, 555 ANAND PVT OTTAWA
ON K1V2R7

Between: 2464865 Ontario Inc Landlord

And

Elias Nehme Tenants
Faten Nehme

2464865 Ontario Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Elias Nehme and Faten Nehme (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 16, 2023 and then reconvened by videoconference on July 5, 2023.

The Landlord's agents, Navdeep Singh and Lee Knowles, attended the hearing. Both Tenants also attended the hearing. The Tenants spoke with Tenant Duty Counsel on both hearing dates.

Determinations:

Preliminary Issue – Request to Review – Divisional Court Proceedings

1. On February 27, 2023 Interim Order LTB-L-040282-22-IN was issued which required that the Tenants pay half of their March 2023 rent into the Board in the amount of \$900.00 by March 15th. Thereafter, the Tenants were required to pay their full lawful monthly rent into the Board on or by the first day of each month until the application was resolved if the Tenants intended on proceeding with their claims pursuant to section 82 of the *Residential Tenancies Act, 2006* (the 'Act'). The Tenants paid the \$900.00 into the Board on March 15th as ordered. However, the Tenants failed to make any further payments into the Board.
2. Pursuant to subsection 195(4) of the Act, the Tenants were not permitted to raise their issues pursuant to section 82 at the hearing on the basis that they did not pay into the

Board as ordered. The Tenants are not prohibited from raising their issues on another day and on their own application should they deem it necessary.

3. At the hearing, the Tenants indicated that they had filed a request to review the Interim Order issued February 27, 2023 and they further indicated that they had filed an appeal in the Divisional Court based on the same Interim Order.
4. As of the date of the hearing, the review request had not yet been actioned by the Board although the Tenants note that it was filed with the Board on April 1, 2023. Therefore, there was no Stay of the proceedings at the Board.
5. The parties further submitted that they all attended a case conference with the Divisional Court and indicated that there is no Stay on the Divisional Court proceedings. Even if there were a Stay, the Board has the authority under subsection 25(1)(b) of the *Statutory Powers and Procedures Act*, R.S.O. 1990, c. S.22 to make an order to lift the Stay.
6. Since there is no Stay on the proceedings, the L1 application proceeded on its merits.

Tenants Request to Adjourn

7. After the decision was rendered that we would be proceeding to hear the Landlords application, the Tenants then requested that the matter be adjourned until they could find out the outcome of the Review Request and to see what happens with their claim in Small Claims Court against the Landlords.
8. The Landlords were opposed to the adjournment request on the basis that the Tenants had not paid rent for 14 months and were not willing to pay rent into the Board either. A further delay would mean that the rent arrears would continue to accumulate with no good faith promise from the Tenants to make any payments.
9. The request to adjourn the matter was denied. The Tenants did not follow the Interim Order to pay into the Board and the Tenants provided no assurance that they would pay into the Board on an another adjournment. Additionally, there is no authority for the Boards proceedings to be stayed pending a Small Claims Court action.
10. Had the Tenants paid their rent into the Board as ordered, then they could have raised their issues at the Landlords hearing for non-payment of rent. The Tenants reluctance to follow the Boards Order and then requesting an adjournment to have their matter decided first seems unduly prejudicial to the Landlord and borders on an abuse of process by the Tenants considering they have been deliberately withholding their rent payments without proper legal authority to do so.

L1 Application

11. 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.
12. As of the hearing date, the Tenants were still in possession of the rental unit.

13. The lawful rent is \$1,824.13. It is due on the 1st day of each month.
14. Based on the Monthly rent, the daily rent/compensation is \$59.97. This amount is calculated as follows: \$1,824.13 x 12, divided by 365 days.
15. The Tenants have paid \$900.00 into the LTB since the application was filed.
16. The rent arrears owing to July 31, 2023 are \$24,637.82.
17. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
18. The Landlord collected a rent deposit of \$1,800.00 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.
19. Interest on the rent deposit, in the amount of \$142.55 is owing to the Tenant for the period from June 4, 2018 to July 5, 2023.

s.83 Relief from Eviction

20. The Tenants do not dispute the amount outstanding as unpaid rent, however, the Tenants believe that the Landlord owes them more than what they owe the Landlord based on their own claims which were not properly before the Board. The Tenants admittedly have deliberately withheld their rent every month since June of 2022.
21. The Tenants further refused to provide any payment proposal to catch up on the rent arrears in order to preserve the tenancy on the basis that they felt they were being treated unfairly during all of their court proceedings and the Tenants instead insisted that the Landlords provide them a purchase price for the property.
22. The Landlord was not opposed to a brief delay before enforcement of the Order and at first suggested September 30th for the Tenants to pay the outstanding arrears and then after the hearing continued, the Landlord retracted their offer for additional time and insisted for July 31st due to the Tenants not paying anything to the Landlord in 14 months, and for refusing to provide any form of viable payment plan.
23. The Tenants have lived in the rental unit for approximately 5 years. Faten Neheme had become unemployed and changed career paths and is now a student and new business owner. The Tenants provided no details regarding their income or expenses to consider whether a payment plan would be a viable option over a period of time.
24. 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 August 31, 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:**

- \$24,823.82 if the payment is made on or before July 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$26,647.95 if the payment is made on or before August 31, 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 August 31, 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 August 31, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$21,356.99. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$59.97 per day for the use of the unit starting July 6, 2023 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before July 29, 2023, the Tenants will start to owe interest. This will be simple interest calculated from July 30, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before August 31, 2023, then starting September 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 September 1, 2023.
10. \$900 together with any accrued interest that the Tenant paid into the LTB in trust shall be released to the Landlord by the LTB.*

July 18, 2023

Date Issued

Terri van Huisstede

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 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.

*Note: When the LTB directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

**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 July 31, 2023

Rent Owing To July 31, 2023	\$25,537.82
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$900.00
Total the Tenant must pay to continue the tenancy	\$24,823.82

B. 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	\$27,361.95
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$900.00
Total the Tenants must pay to continue the tenancy	\$26,647.95

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

Rent Owing To Hearing Date	\$24,013.54
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$900.00
Less the amount of the last month's rent deposit	- \$1,800.00
Less the amount of the interest on the last month's rent deposit	- \$142.55

Total amount owing to the Landlord	\$21,356.99
Plus daily compensation owing for each day of occupation starting July 6, 2023	\$59.97 (per day)