



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

**Citation:** Oxford Properties Group v Alfred Power, 2023 ONLTB 46295

**Date:** 2023-06-30

**File Number:** LTB-L-005470-23

**In the matter of:** 1611, 440 MCMURCHY AVE S BRAMPTON  
ON L6Y2N5

**Between:** Oxford Properties Group Landlord

**And**

Elizabeth May Hall Tenant

Oxford Properties Group (the 'Landlord') applied for an order to terminate the tenancy and evict Elizabeth May Hall (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 6, 2023.

The Landlord's Representatives M. Zarnett and F. McGregor and the Tenant attended the hearing. The Tenant had her daughter, J. Hall present for support.

### **Preliminary issue:**

1. The application named both Elizabeth May Hall and Alfred Power (AP) as respondents. However, at the outset of the hearing, the Tenant EMH testified that AP had moved out of the unit in June 2022. She continued to send to him her portion of the rent until August 2022.
2. The Landlord's Representative told the hearing that they did not receive notice, nor did AP return the keys to the unit.
3. The application was filed in January 2023.
4. Based on the framework from
5. Under the framework set out *1162994 Ontario Inc. v. Bakker*, 2004 CanLII 59995, I find that AP was not in possession of the rental unit when the application was filed. As a result, he is not a proper respondent to this application. Assuming without deciding that I have the jurisdiction to amend this application to an L10, I would decline to do so in the absence of

evidence that the Landlord provided AP with notice of the application or hearing, and as a result it would be unfair to do so.

6. It may be the Landlord or Tenant have a remedy against AP in a different forum. For the purposes of this order, however, I am satisfied that he is not a proper respondent.

**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 \$1,532.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$50.37. This amount is calculated as follows: \$1,532.00 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 \$13,648.00.
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 \$1,532.00 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 \$16.47 is owing to the Tenant for the period from January 1, 2023 to June 6, 2023.
10. EMH told the hearing that she had been paying AP her half of the rent and that AP was not submitting it to the Landlord.
11. EMH continued to sent AP her portion of the rent until August 2022. The Landlord's Representative noted that EMH's portion of the rent has not been received by the Landlord since that date. EMH told the hearing that she cannot afford the rent.
12. EMH told the hearing that her daughter had moved in to help with the rent and arrears. She also added that her daughter has since lost her job. The Landlord's Representative pointed out that no rent, partial rent or arrears have been paid.
13. 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 July 11, 2023 pursuant to subsection 83(1)(b) of the Act.

14. It would be unfair to go any further, as this would be prejudicial to the Landlord. The Tenant has failed to make any payments towards rent or arrears and the amount owing to the Landlord is already substantial.

**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:**
  - \$13,834.00 if the payment is made on or before June 30, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

- \$15,366.00 if the payment is made on or before July 11, 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 July 11, 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 July 11, 2023**
  5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$11,055.75. 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 \$50.37 per day for the use of the unit starting June 7, 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 July 11, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 12, 2023 at 6.00% annually on the balance outstanding.
  8. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
  9. If the unit is not vacated on or before July 11, 2023, then starting July 12, 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 July 12, 2023.

**June 30, 2023**

**Date Issued**

\_\_\_\_\_  
 William Greenberg  
 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 January 12, 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 Board 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before June 30, 2023**

Rent Owing To June 30, 2023	\$13,648.00
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>\$13,834.00</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before July 11, 2023**

Rent Owing To July 31, 2023	\$15,180.00
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

2023 ONLTB 46295 (CanLII)

<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>\$15,366.00</b>

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

Rent Owing To Hearing Date	\$12,418.22
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	- \$1,532.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$16.47
<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>\$11,055.75</b>
Plus daily compensation owing for each day of occupation starting June 7, 2023	\$50.37 (per day)