



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

**Citation:** Anthony Degazon v Brittany Pyche, 2023 ONLTB 46940

**Date:** 2023-06-28

**File Number:** LTB-L-012256-23

**In the matter of:** 4, 480 WELLER ST  
PETERBOROUGH ON K9H2N6

**Between:** Anthony Degazon Landlord

**And**

Reuben Smith Tenant

Anthony Degazon (the 'Landlord') applied for an order to terminate the tenancy and evict Reuben Smith (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's representative, Kristina Robertson and the Tenant attended the hearing. The Tenant met with Tenant Duty Counsel and obtained summary legal information prior to the commencement of the hearing.

### Preliminary Issue:

The Landlord's L1 application named Brittany Pyche (BP) and Reuben Smith (RS) as the Tenants. It was undisputed this was a joint tenancy, the original lease had expired and the tenancy was now month to month. Further, BP vacated the rental unit in December 2022. The Landlord received an email from BP on December 19, 2022 advising she had already vacated. RS confirmed BP had left before Christmas and never returned. Since then, RS has had sole possession of the rental unit and he agreed with the Landlord that the application should be amended to reflect he is the sole Tenant. The application has been amended.

### **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 \$1,255.62. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$41.28. This amount is calculated as follows: \$1,255.62 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 \$10,021.22.
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 \$1,225.00 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 \$14.26 is owing to the Tenant for the period from January 1, 2023 to June 19, 2023.
10. The Tenant agreed with the amount of rent arrears except he believed he should receive an abatement due to maintenance issues (flooring). He said he began to complete his own application but never submitted it because he read he could raise the issues at the L1 hearing.
11. However, the information included in the Notice of Hearing which was sent to him by the Board on March 31, 2023 clearly indicated if he wanted to raise issues at the hearing he was required to "...complete Issues a Tenant Can Raise at a Hearing about a Landlord's Application for Non-Payment of Rent" (included with the Notice of Hearing) and further, "Each party must give the other party a complete copy of all of the evidence they want to use during the hearing as soon as possible but at least 7 days before the hearing.
12. The Tenant did make 2 submissions through the portal (June 13 and June 15) however gave no context with the submissions and no indication of his claims or what remedies he was seeking. The submissions did not meet the time requirements for disclosure and the Landlord should be aware of the allegations and have opportunity to prepare a response. Consequently, the Tenant was not permitted to raise maintenance issues at the hearing as he sought a rent abatement. I find the Tenant is not prejudiced by filing a separate application with the Board regarding maintenance issues. The Tenant was advised to request his application to be heard with the Landlord's L2 application directly which identifies the same issue.

13. The Tenant did not offer the terms of a repayment plan. He only presented an offer to repair the flooring, which he valued at \$5,000.00 and believe the balance should be an abatement. I advised him this was beyond my jurisdiction.
14. The Tenant did not disclose his monthly income that could have assisted in determining his ability to pay his monthly rent along with a payment towards arrears but said he could pay the monthly rent; he is self-employed and can work/earn as much as he wants. His only explanation for not paying any rent since the Landlord filed the application was he felt it was the only way to force the Landlord to make repairs and the failure to do so has inhibited his ability to find a roommate. He said he does not have all the rent owing but some money, although he did not disclose that amount. He has not been looking for housing elsewhere but believed it would take him about a month to do so.
15. Based on the testimony of the Tenant, I am not satisfied a repayment plan is a realistic option and more likely than not will result in further prejudice to the Landlord who has not received any rent from the Tenant in over half a year.
16. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act') including his disclosed personal and financial circumstances and balanced this against any potential prejudice to the Landlord and find that it would not be unfair to postpone the eviction until July 23, 2023 pursuant to subsection 83(1)(b) of the Act. This should afford the Tenant some additional time to secure alternative housing.

**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:**
  - \$10,207.22 if the payment is made on or before June 30, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$11,462.84 if the payment is made on or before July 23, 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 23, 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 23, 2023**

5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$8,496.66. 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 \$41.28 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 July 9, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 10, 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 23, 2023, then starting July 24, 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 24, 2023.

**June 28, 2023**

**Date Issued**

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Troy Rossignol

Vice Chair, 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 24, 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	\$10,021.22
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 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>\$10,207.22</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 23, 2023**

Rent Owing To July 31, 2023	\$11,276.84
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>\$11,462.84</b>

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

Rent Owing To Hearing Date	\$9,549.92
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	- \$1,225.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$14.26

<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>\$8,496.66</b>
Plus daily compensation owing for each day of occupation starting June 20, 2023	\$41.28 (per day)