



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

Citation: Derron Brown v Ashley Smith, 2023 ONLTB 43954

Date: 2023-06-27

File Number: LTB-L-020624-23

In the matter of: 1, 210 WILSON RD S OSHAWA
ON L1H6C3

Between: Derron Brown Landlord

And

Ashley Smith and Skyler Swiatek-Galbraith Tenants

Derron Brown (the 'Landlord') applied for an order to terminate the tenancy and evict Ashley Smith and Skyler Swiatek-galbraith (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on June 5, 2023.

The Landlord Derron Brown attended the hearing.

As of 4:13 pm the Tenants were 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:

1. 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.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$2,195.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$72.16. This amount is calculated as follows: \$2,195.00 x 12, divided by 365 days.

5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to June 30, 2023 are \$7,475.00.
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 \$2,195.00 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.
9. Interest on the rent deposit, in the amount of \$35.18 is owing to the Tenants for the period from October 15, 2022 to June 5, 2023.
10. 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 Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
11. For example, the Landlord tried to work with the Tenants by sending emails and also by calling. Most calls were not returned. There was also no reply to a payment plan which the Landlord suggested. Even a couple of days ago, there was no reply from the Tenants.

It is ordered that:

12. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.

Pay and Stay:

13. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**

- \$7,661.00 if the payment is made on or before June 30, 2023. See Schedule 1 Chart A for the calculation of the amount owing.
- \$9,856.00 if the payment if made after June 30, 2023 but on or before July 8, 2023. See Schedule A Chart B for the calculation of the amount owing.

14. 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 July 8, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.

Pay and Go:

15. **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 July 8, 2023**
16. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$3,596.62. 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 Chart C for the calculation of the amount owing.
17. The Tenants shall also pay the Landlord compensation of \$72.16 per day for the use of the unit starting June 6, 2023 until the date the Tenants actually move out of the rental unit or get evicted by the Sheriff.
18. If the Tenants do not pay the Landlord the full amount owing on or before July 8, 2023, the Tenants will start to owe interest. This will be simple interest calculated from July 9, 2023 at 6.00% annually on the balance outstanding.
19. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
20. If the unit is not vacated on or before July 8, 2023, then starting July 9, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
21. 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 9, 2023.

June 27, 2023

Date Issued

Michelle Tan/James Campbell

Members, 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 9, 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. Pay and Stay:

Amount the Tenants 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	\$7,475.00
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Total the Tenants must pay to continue the tenancy	\$7,661.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made after June 30, 2023 but on or before July 31, 2023

Rent Owing To July 31, 2023	\$9,670.00
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Total the Tenants must pay to continue the tenancy	\$9,856.00

Pay and Go:

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

Rent Owing To Hearing Date	\$5,640.80
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$2,195.00
Less the amount of the interest on the last month's rent deposit	- \$35.18
Total amount owing to the Landlord	\$3,596.62
Plus daily compensation owing for each day of occupation starting June 6, 2023	\$72.16 (per day)