



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

Citation: Paul Scherer v Virgalem Mahari, 2023 ONLTB 45180

Date: 2023-06-26

File Number: LTB-L-006271-23

In the matter of: 308, 357 HOFFMAN ST
KITCHENER ON N2M3N5

Between: Paul Scherer Landlord

And

Teclezghi Tekie and Virgalem Mahari Tenants

Paul Scherer (the 'Landlord') applied for an order to terminate the tenancy and evict Teclezghi Tekie and Virgalem Mahari (collectively the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 8, 2023.

The Landlord Paul Scherer and the Tenants Teclezghi Tekie and Virgalem Mahari attended the hearing.

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 \$1,086.00. It is due on the first day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$35.70. This amount is calculated as follows: \$1,086.00 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 \$156.00.

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 \$1,066.00 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. 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 September 30, 2023 pursuant to subsection 83(1)(b) of the Act.
10. In this claim, the Tenants refuse to pay the amount of a rent increase of 2.5% for 2023.
11. The Landlord testified that he has spent \$42,000.00 for a new boiler and \$10,000.00 for a new hot water tank. Both are necessary for the provision of heat in the complex.
12. The Tenant complains of unlawful rent increases. He testified that his rent was increased in 2019 (2%) to \$978, 2020 (2%) to \$995, 2022 (4.2%) to \$1060.
13. However, for 2022, the tenant has been paying rent of \$1060. He has been paying this amount since January 1, 2022.
14. The Act provides as follows:

Rent increase deemed not void

135.1 (1) An increase in rent that would otherwise be void under subsection 116 (4) is deemed not to be void if the tenant has paid the increased rent in respect of each rental period for at least 12 consecutive months.

...

Rent deemed lawful

136 (1) Rent charged one or more years earlier shall be deemed to be lawful rent unless an application has been made within one year after the date that amount was first charged and the lawfulness of the rent charged is in issue in the application. 2006, c. 17, s. 136 (1).

15. Therefore, the deadline for the Tenant to bring an application challenging the rent increase in 2022, would have been one year, from January 1, 2022.
16. The Tenant did not bring an application to challenge the 2022 rent increase within that time period, but raised it at the hearing. It is simply too late to challenge the 2022 rent increase at this late stage (June 8, 2023).

17. Similarly, for the previous rent increases in 2018, 2019, 2020, it is too late to challenge these rent increases because more than one year has elapsed since they were first charged.
18. In January 2023, the Landlord was entitled to raise the rent again, 2.5%, based on the rent for 2022. The Landlord served a valid notice of rent increase, an N1, on 24 September 2022. He gave the Tenants more than the 90 days he was required to give. The new rent of \$1086 is therefore lawful, being a 2.5% rent increase over the 2022 rent of \$1060.00. The new 2023 rent is therefore \$1086.00/month.
19. The rent to June 30, 2023, is all paid up, save for the 2.5% increase, in the amount of \$156.00, owing since January 1, 2023.

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:**
 - \$1,428.00 if the payment is made on or before July 31, 2023;
 - \$2,514.00 if the payment is made on or before August 31, 2023
 - \$3,600.00 if the payment is made on or before September 30, 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 September 30, 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 September 30, 2023.**
5. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the arrears of rent, compensation and costs the Landlord is entitled to by \$763.81. See Schedule 1 for the calculation of the amount owing. However, the Landlord is authorized to deduct from the amount owing to the Tenant \$35.70 per day for compensation for the use of the unit starting June 9, 2023 until the date the Tenant moves out of the unit.
6. If the Tenant does not pay the Landlord the full amount owing on or before September 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 1, 2023 at 6.00% annually on the balance outstanding.

7. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
8. If the unit is not vacated on or before September 30, 2023, then starting October 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 October 1, 2023.

June 26, 2023

Date Issued

James W. Campbell
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 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 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 July 31, 2023

Rent Owing To July 31, 2023 (\$156 or the 2.5% increase since Jan 1, 2023 + rent for July, at \$1086/m)	\$1,242
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$1,428.00

B. Amount the Tenant 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 (\$156 or the 2.5% increase since Jan 1, 2023 + rent for July, Aug, at \$1086/m)	\$2,328.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$2,514.00

C. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before September 30, 2023

Rent Owing To September 30, 2023 (\$156 or the 2.5% increase since Jan 1, 2023 + rent for July, Aug, Sept at \$1086/m)	\$3,414.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00

Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$3,600.00

D. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$141.1
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,066.00
Less the amount of the interest on the last month's rent deposit	- \$24.91
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$-763.81
Plus daily compensation owing for each day of occupation starting June 9, 2023	\$35.70 (per day)