



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

**Citation:** Shan v Swartman, 2023 ONLTB 45129

**Date:** 2023-06-21

**File Number:** LTB-L-061706-22

**In the matter of:** 270 DAVIS DR  
UXBRIDGE ON L9P1R1

**Between:** Hui Gao and Yun Shan Landlords

**And**

Vicki Cheryl Swartman Tenant

Hui Gao and Yun Shan (the 'Landlords') applied for an order to terminate the tenancy and evict Vicki Cheryl Swartman (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 12, 2023. Only the Landlord, H. Gao, and the Landlords' legal representative, R. Yu, attended the hearing. As of 9:54 a.m., the Tenant was 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 Landlords' evidence.

### **Background:**

1. This matter was first before the Board on February 9, 2023. The Landlords and the Tenant attended the hearing. After hearing the Landlord's evidence, the matter was adjourned as the Tenant submitted that she served and filed a list of issues in the tenancy and evidence pursuant to section 82 of the *Residential Tenancies Act, 2006* (the 'Act') via mail. Neither the Landlords nor the Board received them.
2. Interim order LTB-L-061706-22-IN was issued on February 13, 2023, ordering the Tenant to ensure that her evidence and list of issues were served and filed by a specified date and for the Tenant to pay rent to the Landlords in full and on time until the matter returns.
3. The Board's records show the Tenant did not file the issues or evidence with the Board. The Landlords submitted that the Tenant did not pay rent in full and on time until the present

hearing date. There was no return of the interim order or the Notice of Hearing as undeliverable.

**Determinations:**

4. The Landlords served the Tenant with a valid Notice to End Tenancy Early for Nonpayment 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.
5. As of the hearing date, the Tenant was still in possession of the rental unit.
6. The lawful rent is \$3,300.00. It is due on the 22<sup>nd</sup> day of each month.
7. Based on the Monthly rent, the daily rent/compensation is \$108.49. This amount is calculated as follows: \$3,300.00 x 12, divided by 365 days.
8. The Tenant has paid \$1,650.00 to the Landlords since the application was filed.
9. The rent arrears owing to June 21, 2023 are \$42,900.00. The Landlord's claim exceeds the Board's monetary jurisdiction of \$35,000.00. The Landlord indicated a desire to proceed with the hearing of the application and voluntarily waived the portion of the claim that exceeds the Board's monetary jurisdiction.
10. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. The Landlords collected a rent deposit of \$3,300.00 from the Tenant and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
12. Interest on the rent deposit, in the amount of \$148.09 is owing to the Tenant for the period from February 18, 2021 to June 12, 2023.
13. I have considered all of the disclosed circumstances in accordance with subsection 83 of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlords attempted to negotiate a repayment agreement with the Tenant, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
14. Pursuant to section 83(6), the Landlords submitted that several attempts were made to negotiate a repayment plan. However, the Tenant was unresponsive. I am satisfied that the Landlords attempted to negotiate a payment agreement with the Tenant.
15. Regarding section 83(2), the Tenant was not present to disclose any circumstances for me to consider delaying or denying eviction. Further, the Landlords were not aware of any of the Tenant's circumstances for me to consider delaying or denying eviction.

## Board Costs

16. Pursuant to Interpretation Guideline # 3 of the *Board's Interpretation Guidelines*, the Board has the discretion to require a party to pay costs including Board costs if the party engages in conduct that is unreasonable. Examples of unreasonable conduct are outlined in the Guideline and include:
- Asking for adjournments or delays without justification;
  - Failing to follow the directions of the Member or upsetting the orderly conduct of the hearing;
17. I find the Tenant's conduct was unreasonable. As outlined above, the Tenant's adjournment request was granted for the purpose of ensuring her list of issues and evidence were served and filed. The Tenant did not do so. As such, I find that the adjournment request was without justification and the time set aside for this hearing was wasted. Further, the Tenant failed to follow the direction of the Board to pay rent to the Landlords until the matter returned. This resulted in the arrears outstanding exceeding the monetary jurisdiction by the Board and the Landlords waived a substantial amount of arrears. In consideration of the foregoing, the Tenant is required to pay \$200.00 to the Board.
18. Pursuant to section 196 of the *Residential Tenancies Act, 2006* (the 'Act') and Rule 9 of the *Board's Rules of Practice*, if the Tenant fails to pay the costs ordered, the Board may refuse to allow the Tenant's application to be filed until the costs are paid.

### It is ordered that:

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**
  - \$43,086.00 if the payment is made on or before June 21, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$46,386.00 if the payment is made on or before July 2, 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 2, 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 2, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlords \$35,000.00. 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 Landlords 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 Landlords compensation of \$108.49 per day for the use of the unit starting June 13, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlords the full amount owing on or before July 2, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 3, 2023 at 6.00% annually on the balance outstanding.
8. The Landlords 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 2, 2023, then starting July 3, 2023, the Landlords 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 Landlords on or after July 3, 2023.
11. The Tenant shall pay Landlord and Tenant Board costs in the amount of \$200.00 on or before July 2, 2023.
12. If the Tenant fails to pay to the Board the required amount by July 2, 2023, the Board may refuse to allow the Tenant to file an application until the amount in paragraph 11 is paid.

**June 21, 2023**

**Date Issued**

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Camille Tancioco

Member, Landlords 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 3, 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.

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\*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

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**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 21, 2023**

Rent Owing To June 21, 2023	\$44,550.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlords since the application was filed	- \$1,650.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlords 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>\$43,086.00</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 2, 2023**

Rent Owing To July 21, 2023	\$47,850.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlords since the application was filed	- \$1,650.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlords 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>\$46,386.00</b>

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

Rent Owing To Hearing Date	\$43,636.78
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlords since the application was filed	- \$1,650.00
<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	- \$3,300.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$148.09

<b>Less</b> the amount the Landlords 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>Less</b> the amount exceeding the Board's jurisdiction	-\$3,724.69
<b>Total amount owing to the Landlords</b>	<b>\$35,000.00</b>
Plus daily compensation owing for each day of occupation starting June 13, 2023	\$108.49 (per day)