



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

**Citation:** H&R Property Management v Jalali, 2023 ONLTB 41552

**Date:** 2023-06-08

**File Number:** LTB-L-000438-22

**In the matter of:** 814, 11 ANTRIM CRES  
SCARBOROUGH ON M1P4P3

**Between:** H& R Property Management Landlord

**And**

Khadija Jalali and Wiseudin Jalali Tenants

H&R Property Management (the 'Landlord') applied for an order to terminate the tenancy and evict Khadija Jalali and Wiseudin Jalali (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was originally scheduled on July 4, 2022, and was adjourned to allow the Tenants additional time to secure assistance to pay the arrears. At the January 5, 2023 hearing, the parties agreed to an order on consent. The hearing was reconvened to clarify the terms of the consent on May 26, 2023.

The Landlord's Legal Representative, David Ciabotaru and one of the Tenants, Wiseudin Jalali (WJ), attended the hearing.

### **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 \$1,324.66. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$43.55. This amount is calculated as follows:  $\$1,324.66 \times 12$ , divided by 365 days.
5. The Tenants have paid \$6,600.00 to the Landlord since the application was filed.
6. The rent arrears owing to May 31, 2023 are \$17,424.20.
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 \$1,238.55 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 \$22.00 is owing to the Tenants for the period from January 1, 2021 to May 26, 2023.
10. The Landlord sought an order for eviction.

*Relief from eviction*

11. WJ proposed a 14-month payment plan with weekly payments of \$300.00. The Landlord's Legal Representative opposed a payment plan as WJ had committed to make rent payments at the initial hearing, as reflected in the interim order, and did not do so. WJ had also committed to pay all of the arrears owing in two payments in January and February 2023, at the January 5, 2023 hearing, but the Tenants have paid only \$2,500.00 since the hearing. The arrears have continued to rise since the application was filed.
12. WJ testified that the Tenants had not paid the arrears since the January 5, 2023 hearing date, because he had intended to borrow some money to pay the arrears, but the loan did not come through. He did not explain why the Tenants had not paid their full monthly rent since the January 5, 2023 hearing date. WJ testified that the Tenants could pay the rent and an additional \$300.00 per week towards the arrears going forward.
13. Given the Tenants' payment history and WJ's testimony, I am not satisfied that a payment plan is appropriate under the circumstances. WJ testified that the Tenants can afford to make arrears payments because they have a monthly income of close to \$2,000.00 after rent and other expenses. However, the Tenants have not met previous commitments to pay their monthly rent or demonstrated any effort to preserve their tenancy by making progress towards the arrears since the application was filed.
14. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'). Given the presence of two young children in the unit, and the fact that the Landlord is holding a last month's rent deposit, I have determined that it is appropriate to allow the Tenants some additional time to find a new place to live, without further prejudice to the Landlord. Therefore, I find that it would

not be unfair to postpone the eviction until June 30, 2023 pursuant to subsection 83(1)(b) of the Act.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$18,934.86 if the payment is made on or before June 30, 2023. See Schedule 1 for the calculation of the amount owing.
3. 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 June 30, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **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 June 30, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$16,157.29. 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 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$43.55 per day for the use of the unit starting May 27, 2023 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before June 19, 2023, the Tenants will start to owe interest. This will be simple interest calculated from June 20, 2023 at 6.00% annually on the balance outstanding.
8. The Landlord or the Tenants 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 June 30, 2023, then starting July 1, 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 1, 2023.

**June 8, 2023**  
**Date Issued**

\_\_\_\_\_  
 Kathleen Wells  
 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 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   | \$25,348.86        |
| Application Filing Fee  | \$186.00           |
| <b>Less</b> the amount the Tenants paid to the Landlord since the application was filed | - \$6,600.00       |
| <b>Total the Tenants must pay to continue the tenancy</b>                               | <b>\$18,934.86</b> |

**B. Amount the Tenants must pay if the tenancy is terminated**

|   |                      |
|---|----------------------|
| Rent Owing To Hearing Date  | \$23,831.84          |
| Application Filing Fee  | \$186.00             |
| <b>Less</b> the amount the Tenants paid to the Landlord since the application was filed | - \$6,600.00         |
| <b>Less</b> the amount of the last month's rent deposit                                 | - \$1,238.55         |
| <b>Less</b> the amount of the interest on the last month's rent deposit                 | - \$22.00            |
| <b>Total amount owing to the Landlord</b>   | <b>\$16,157.29</b>   |
| Plus daily compensation owing for each day of occupation starting May 27, 2023          | \$43.55<br>(per day) |