



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

Citation: Kyle Malinouski v Jessica Kinsella, 2023 ONLTB 41123

Date: 2023-06-06

File Number: LTB-L-075134-22

In the matter of: UPPER, 49 ALLENBY AVE BRANTFORD
ON N3S1R1

Between: Kyle Malinouski Landlord

And

Jessica Kinsella Tenant

Kyle Malinouski (the 'Landlord') applied for an order to terminate the tenancy and evict Jessica Kinsella (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on May 23, 2023.

The Landlord's legal representative, Jordan Niewhof and the Tenant attended the hearing. There was an attempt at mediation however unsuccessful.

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 \$611.60. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$20.11. This amount is calculated as follows: $\$611.60 \times 12$, divided by 365 days.
5. The Tenant has paid \$3,635.71 to the Landlord since the application was filed.
6. The rent arrears owing to May 31, 2023 are \$158.09.
7. At the hearing the Tenant disputed that she should have to pay the cost. This cost is normally ordered if an applicant is successful in obtaining an order which allows the relief they asked for in the application. As such I do not find it unreasonable for the Landlord not to be reimbursed for the cost of filing the application and being successful. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.
9. The Tenant testified that it would be difficult for her to pay the arrears and the application fee. However, the Tenant did state that her mother also lives in the unit and contributes to the rent.
10. 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 June 30, 2023 pursuant to subsection 83(1)(b) of the Act to allow the Tenant sufficient time to find the funds to pay the arrears and preserve the tenancy.

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:**
 - \$955.69 if the payment is made on or before June 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 June 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 June 30, 2023**

5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$195.02. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$20.11 per day for the use of the unit starting May 24, 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 June 17, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 18, 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 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 6, 2023

Date Issued

Nicole Huneault

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 June 30, 2023

Rent Owing To June 30, 2023	\$4,405.40
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,635.71
Total the Tenant must pay to continue the tenancy	\$955.69

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

Rent Owing To Hearing Date	\$3,644.73
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,635.71
Total amount owing to the Landlord	\$195.02
Plus daily compensation owing for each day of occupation starting May 24, 2023	\$20.11 (per day)