



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

Citation: IMH POOL XV LP v Eselita B Ducusin, 2023 ONLTB 41326

Date: 2023-06-05

File Number: LTB-L-071531-22

In the matter of: 102, 91 SILVER SPRINGS BOULEVARD
TORONTO Ontario M1V1R1

Between: IMH POOL XV LP Landlord

And

Elizabeth Jainga, Eselita B Ducusin and Tenants
Jaquelyn Jainga

IMH POOL XV LP (the 'Landlord') applied for an order to terminate the tenancy and evict Elizabeth Jainga, Eselita B Ducusin and Jaquelyn Jainga (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on May 25, 2023.

The Landlord's legal representative, S. Enriquez, and the Tenant, J. Jainga 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 \$1,526.02. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$50.17. This amount is calculated as follows: \$1,526.02 x 12, divided by 365 days.
5. The Tenant has paid \$6,800.00 to the Landlord since the application was filed.
6. The rent arrears owing to May 31, 2023 are \$35,214.03.

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 \$1,468.51 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 \$43.93 is owing to the Tenants for the period from January 2, 2020 to May 25, 2023.
10. The Tenant, J. Jainga (JJ) admits the amount of arrears owed. She said that she is not the one who was responsible for the rent, and she did not take proper care to oversee whether the rent was paid. JJ said that it was her father who is responsible for paying the rent, and he told her it was being paid. She said that there have been many family bereavements in the last year, and all their income was going towards paying for expenses related to the bereavements.
11. JJ said that the Tenants request a payment plan or a delay to the eviction. She said that she can pay \$5,000.00 immediately, and then \$625.00 per week towards the arrears. She said that she, her mother and father, sister and aunt live in the rental unit. She said that her aunt is retired, but her father, mother and her sister are working. JJ said that she is currently unemployed, but she is looking for a job. She said that the Tenants have lived in the rental unit since 2009.
12. The Landlord requests a standard termination order. The Landlord submits that JJ testified that she is not working, and there has been no evidence submitted to support JJ's testimony that the rent will be paid going forward.
13. This application has been delayed in coming to a hearing, and it was adjourned 8 months ago due to scheduling overflow. I find that JJ was unable to adequately explain why the Tenants have only paid \$6,800.00 rent in over two years when at least three people in the rental unit are working. She also had no documentary evidence to support her payment plan proposal. JJ is not working, and she provided no documentary evidence of any household income.
14. The Tenants have lived in the rental unit for a substantial length of time. However, the arrears are substantial, and they now exceed the Board's jurisdiction. The Tenants have taken advantage of the delay in this matter coming to a hearing to continue paying no rent, so I find it would be very prejudicial to the Landlord to have any further delay.
15. 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 I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. In particular, the arrears now exceed the Board's jurisdiction, the Tenants have paid almost no rent in over 2 years, and there is no credible evidence to suggest that they either have the intention, or sufficient income to pay the rent going forward. The application has been delayed, and this has permitted the Tenants to live in

the unit for a lengthy time without paying any rent. It is very prejudicial to the Landlord for the tenancy to continue.

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:**
 - \$35,186.00 if the payment is made on or before June 16, 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 16, 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 16, 2023.**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$33,615.82. 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 Tenants shall also pay the Landlord compensation of \$50.17 per day for the use of the unit starting May 26, 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 16, 2023, the Tenants will start to owe interest. This will be simple interest calculated from June 17, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before June 16, 2023, then starting June 17, 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 June 17, 2023.

June 5, 2023

Date Issued

Nancy Morris

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 December 17, 2023 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. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before June 16, 2023

Rent Owing To June 30, 2023	\$43,540.05
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$6,800.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy Limit of Board jurisdiction is \$35,000.00 plus \$186.00 filing fee	Amount actually owed(\$36,926.05) Amount payable \$35,186.00

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

Rent Owing To Hearing Date	\$41,742.26
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$6,800.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,468.51
Less the amount of the interest on the last month's rent deposit	- \$43.93
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00

Total amount owing to the Landlord	\$33,615.82
Plus daily compensation owing for each day of occupation starting May 26, 2023	\$50.17 (per day)