



## Order under Section 69 of the Residential Tenancies Act, 2006

Citation: Dhiman v Habash, 2023 ONLTB 41405

Date: June 2, 2023

File Number: LTB-L-069179-22

In the matter of: 10 Cornerbrook Avenue  
London, ON N5W 1P3

Between: Aman Dhiman, Baljit Singh and Harvinder  
Kaur

Landlords

and

Abraham Habash and Chelsea Habash

Tenants

Aman Dhiman, Baljit Singh and Harvinder Kaur (the 'Landlords') applied in a L1 application for an order to terminate the tenancy and evict Abraham Habash and Chelsea Habash (the 'Tenants') because the Landlords claimed that the Tenants did not pay the rent that they owe.

This application was heard by telephone/video-conference on May 17, 2023. The Landlords Harvinder Kaur and Aman Dhiman attended the hearing on behalf of all the Landlords, with their legal representative Amjer Singh Mandur.

As of 9:40am (the hearing was scheduled to start at 9am), the Tenants were 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 or reschedule the hearing made by the Tenants before this hearing. As a result, the hearing proceeded with only the Landlords' evidence as allowed by section 7 of the Statutory Powers Procedure Act.

Determinations:

### Preliminary Issue – Service of N4 Notice Valid on Tenants

1. The Landlords confirmed that 2 of the Tenants originally named in the N4 Notice of Termination and Application were minors – thus the application was amended to remove the 2 minor children and only contain the names of the 2 Tenants who are the parents.
2. Initially, I requested the Landlords with respect to proving they had served the Tenants since the Certificate of Service stated all 3 Landlords had delivered the N4 Notice of Termination in the

mailbox. The matter was stood down so the Landlord Harvinder Kaur could attend to speak to attending at the mailbox on August 17, 2021. Her story did not match with Aman Dhiman's version of events. After some discussion, it was noted there were 2 N4 Notices served, but this L1 application only relies on the one served on August 17, 2021. The Landlords seemed confused over which mailbox visit they were testifying about.

3. Eventually the service issue pivoted to the method of email service. I asked the Landlords for a copy of the lease agreement, which shows the Tenants made prior written agreements to have documents served to them by email. I note that shortly after the hearing, the Landlords filed into the Tribunals Ontario Portal (TOP) proof of email service of the N4 Notice of Termination emailed to both of the Tenants on August 17, 2021. The lease only listed one Tenant's email address, but I am satisfied that both Tenants signed the lease and both agreed at that time to use Abraham's email address for service upon both of them.

### L1 Application

4. The Landlords 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 L1 application was filed.
5. When the L1 application was filed, and continuing as of the hearing date, the Tenants are still in possession of the rental unit.
6. The lawful rent is \$2,800.00 per month, due on the first (1<sup>st</sup>) day of each month. The monthly rent has remained unchanged since the start of the arrears claimed in the N4 Notice.
7. Based on the monthly rent, the daily rent/compensation is \$92.05. This amount is calculated as follows: \$2,800.00 x 12 months, divided by 365 days.
8. The Tenants made no payments to the Landlords since the L1 application was filed but before this hearing
9. The current rent arrears owing as of the hearing date (rent owing up to May 31, 2023) is \$61,600.00 (spanning a time period of 22 months of rent arrears).
10. The Landlords confirmed that they understood the monetary jurisdiction of the Landlord and Tenant Board is \$35,000.00 (the same monetary jurisdiction as Small Claims Court) as per section 207 of the Residential Tenancies Act (the 'Act'). The Landlords confirmed they are waiving any entitlement to rent arrears claimed beyond \$35,000.00, and the consequences that all rights in excess of the Board's jurisdiction are extinguished per section 207(3), so that no amount beyond \$35,000.00 can ever be sought in any other actions.
11. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. There is no last month's rent deposit.
13. When questioned about whether or not the Landlords had attempted to offer a repayment plan with the Tenants, the Landlords advised that they mostly communicated with the Tenants by texting and calling, but no specific negotiations had occurred regarding a repayment plan. While section 83(6) requires me to consider whether the Landlords attempted to negotiate an agreement with the

Tenants, there is no statutory consequence given if negotiations have not occurred. Given the length of time where the Tenants paid

zero rent, I find that the absence of offering payment terms does not impact my discretion regarding section 83(1) relief from eviction analysis.

14. The Landlords advised that the prolonged period of rent arrears and high arrears balance have caused severe financial hardship. The Landlords did not know much about the Tenants' situation other than the family consists of 2 parents and 2 minor children. They believed Chelsea had a job but did not know much else about the family's circumstances.
15. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, (including the impact of COVID19 on the parties and whether the Landlords attempted to negotiate a repayment agreement with the Tenants), and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
16. The Landlords requested an expedited eviction order given the length of time it has taken to have this hearing, and the amount of growing rent arrears. Since the Landlords chose to start, and continue with their L1 application, in this jurisdiction rather than suing in the Courts (where they would not be subject to the same monetary cap), I did not find that the current circumstances warrant or justify a faster eviction than the Board's standard eviction order.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated unless the Tenants void this order.

#### Pay-and-Stay Option

2. The Tenants may void this order and continue the tenancy by paying to the Landlords or to the LTB in trust:
  - ☐ \$35,186.00\* if the payment is made on or before June 13, 2023 (see Schedule 1 Part A for how this amount was calculated).
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 13, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.

#### Pay-and-Go Option

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 13, 2023 (standard 11 days from the issuance date of this order).
5. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$35,186.00\*\*. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application (see Schedule 1 Part B for the calculation of the amount owing).
6. If the rent arrears did not already reach the maximum monetary jurisdiction of the Board, normally the Tenants would also have to pay the Landlords daily compensation of \$92.05 per day for the use of the unit starting June 1, 2023 until the date the Tenants actually move out of the rental unit or get

evicted by the Sheriff. However, since the maximum amount this Board can award has been reached, the daily compensation rate is \$0.00 until the Tenants vacate.

7. If the Tenants do not pay the Landlords the full amount owing of \$35,186.00 on or before June 13, 2023, the Tenants will start to owe interest. This will be simple interest calculated from June 14, 2023 onwards at 6.00% annually on the balance outstanding.
8. The Landlords 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 13, 2023, then starting June 14, 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 June 14, 2023.

June 2, 2023

Date Issued

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Michelle Tan

Vice Chair, 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 14, 2023 if the order has not been filed on or before this date with the Court Schedule 1

#### SUMMARY OF CALCULATIONS

Note: The monetary jurisdiction of the LTB is \$35,000.00 maximum for rent arrears. Claims to any rent arrears beyond this amount are extinguished by this order.

A. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before June 13, 2023 (PAY-AND-STAY OPTION)

Rent Owing To June 30, 2023	\$64,400.00
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$0.00
Total the Tenants must pay to continue the tenancy	\$35,186.00*

B. Amount the Tenants must pay if the tenancy is terminated (PAY-AND-GO-OPTION)

Rent Owing To Hearing Date (rent up to May 31, 2023)	\$61,600.00
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
Total amount owing to the Landlords	\$35,186.00**
Plus daily compensation owing for each day of occupation starting June 1, 2023 onwards	\$0.00 (per day)