



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** 1175326 ONTARIO LTD. v Brendan Henry, 2023 ONLTB 38650

**Date:** 2023-05-23

**File Number:** LTB-L-067164-22

**In the matter of:** 401, 105 ROWENA DR  
TORONTO ON M3A1R2

**Between:** 1175326 ONTARIO LTD. Landlord

**And**

Brendan Henry Tenant

1175326 ONTARIO LTD. (the 'Landlord') applied for an order to terminate the tenancy and evict Brendan Henry (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on May 11, 2023. The Landlord's Legal Representative, J. Paine, and the Tenant attended the hearing.

**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 \$1,332.04. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$43.79. This amount is calculated as follows: \$1,332.04 x 12, divided by 365 days.
5. The Tenant has paid \$8,050.07 to the Landlord since the application was filed.
6. The rent arrears owing to May 31, 2023 are \$2,452.98.
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 \$1,228.72 from the Tenant 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 \$18.01 is owing to the Tenant for the period from April 1, 2022 to May 11, 2023.

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## Relief from Eviction

10. The Tenant testified that he has resided in the unit for over 10 years and always paid the rent by money order. After he gave two money orders to the Landlord for the month of July 2022, and another two for the month of August 2022, he was informed by an employee of the Landlord that they were unable to scan the money orders and returned all four to him. The Tenant contacted Western Union where he purchased the money order and was told there was nothing wrong with them. The next day, the Tenant returned the money order to the Landlord's unnamed employee and stated that the Landlord had several staff changes at the time.
11. As for the rent for September 2022, the Tenant claimed he paid \$1,000.00 on August 31, 2022, and \$288.00 on September 15, 2022, relying on a POS Sell Services invoice he provided. The invoice contained his name but a different address. The dates of these payments conflict with the dates in the Landlord's ledger which shows that both payments were made and returned on September 6, 2022.
12. The Tenant asserted that if the Landlord returned the money order, he has been assured by Western Union that they will give the Landlord one cheque covering the full amount for the three months. The Landlord denied having possession of any of the money order.
13. Based on the foregoing, I am not satisfied that the Tenant paid the rent for the months of July, August, and September 2022. By his own admission, the Tenant had always paid the rent by money order and never had a problem until August or September 2022 when he was approached by the Landlord's employee who returned the money orders to him. Although the Tenant claims he gave the money order back to the Landlord the next day, there is simply no evidence to substantiate his claim.
14. The Tenant argued that if the Landlord returns the money orders, then Western Union will give the Landlord a cheque covering the full amount. This argument supports the Landlord's claim that they have not received any payments for those months. I do not find the Tenant to be a credible witness. He has no reasonable explanation for why he has not requested a refund from Western Union and no communication from them on issuing a cheque to the Landlord.
15. I have considered all 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 15, 2023 pursuant to subsection 83(1)(b) of the Act. The parties agree that the Tenant will pay the outstanding amount on or before June 15, 2023.

**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:**
  - \$2,638.98 if the payment is made on or before May 31, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

- \$3,971.02 if the payment is made on or before June 15, 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 15, 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 15, 2023**
  5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$541.90. 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 Tenant. See Schedule 1 for the calculation of the amount owing.
  6. The Tenant shall also pay the Landlord compensation of \$43.79 per day for the use of the unit starting May 12, 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 3, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 4, 2023 at 6.00% annually on the balance outstanding.
  8. If the unit is not vacated on or before June 15, 2023, then starting June 16, 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 16, 2023.

**May 23, 2023**  
**Date Issued**

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 Jitewa Edu  
 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 16, 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 31, 2023**

Rent Owing To May 31, 2023	\$10,503.05
Application Filing Fee	\$186.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$8,050.07
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$2,638.98</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before June 15, 2023**

Rent Owing To June 30, 2023	\$11,835.09
Application Filing Fee	\$186.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$8,050.07
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$3,971.02</b>

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

Rent Owing To Hearing Date	\$9,652.70
Application Filing Fee	\$186.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$8,050.07
<b>Less</b> the amount of the last month's rent deposit	- \$1,228.72
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$18.01
<b>Total amount owing to the Landlord</b>	<b>\$541.90</b>
Plus daily compensation owing for each day of occupation starting May 12, 2023	\$43.79 (per day)