



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Surinder Vij v Kelly Blake, 2023 ONLTB 37794

**Date:** 2023-05-19

**File Number:** LTB-L-069800-22

**In the matter of:** UPPER LEVEL, 84 EARNSCLIFFE CIRCLE  
BRAMPTON ON L6T2B2

**Between:** Surinder Vij Landlord

**And**

Kelly Blake Tenant

Surinder Vij (the 'Landlord') applied for an order to terminate the tenancy and evict Kelly Blake (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on May 8, 2023.

The Landlord and the Tenant attended the hearing.

### Determinations:

#### PRELIMINARY REQUEST BY LANDLORD

1. At the beginning of the hearing, the Landlord advised the Board that a separate order had issued terminating the tenancy on March 31, 2023 (LTB-L-021428-22) and that the order had been filed with the sheriff with the enforcement date of June 6, 2023.
2. As such, the Landlord was seeking an order for arrears and costs only with a per diem rate until the Tenant moved out. In essence, the Landlord sought to withdraw their request for eviction and proceed only with an order for the monies owed to them.
3. The Tenant understood the Landlord's request and had no submissions against it.
4. As such, the Landlord's request was granted.
5. I note that the order referred to by the Landlord was issued on February 2, 2023 which terminated the tenancy on consent on March 31, 2023. The Tenant filed a request to review on February 27, 2023 and an order was issued the following day denying the review request.

#### PRELIMINARY ISSUE BY TENANT

6. At some point during the hearing the Tenant raised a preliminary issue with respect to the lawful monthly rent and alleged that the Landlord illegally increased her rent in April 2021.

7. She testified that she had previously filed a T1 application (LTB-T-075174-22, previously CET-04832-22) for the same issue and there had been a hearing and she was awaiting the order.
8. As such, the Tenant sought to adjourn this hearing so that the amount she owed the Landlord would be offset by the amount owed to her as a result of the T1 order.
9. The Landlord opposed the Tenant's adjournment request as the Landlord believed this was a delay tactic by the Tenant.
10. Subsection 183 of the Act requires that the Board adopt the most efficient and expeditious way in resolving disputes between the parties. While the outcome of the Tenant's T1 application may have an impact on the arrears owed by the Tenant to the Landlord, the issue of the lawful monthly rent was very much a live issue in the application before the Board.
11. I did not find an adjournment to be the best route to address the issue the Tenant was raising. As such, the Tenant's adjournment request was denied but I proceeded to hear the issue of what constituted the lawful monthly rent. As eviction is no longer being sought by the Landlord, there was very little prejudice to proceed with the hearing. Further, if the Tenant is owed anything on the Tenant's T1 application, that would have to be offset in this order, in any event.
12. The Tenant testified that she moved into the rental unit on October 1, 2019 and paid \$1,500.00 as rent. She testified that on April 1, 2021, the Landlord increased the rent to \$1,995.00. As the Tenant had no choice to move elsewhere, she dipped into her savings and paid this amount.
13. The Tenant submits that the Landlord increased the rent during the rent freeze period and as such, she has paid an illegal rent amount. The Tenant seeks that the Board declare her rent to be \$1,500.00 and make any adjustments on what is owed by her to the Landlord.

#### Landlord's response

14. The Landlord confirmed the Tenant's move in date and that the rent was \$1,500.00.
15. The Landlord testified that the parties executed an N11 with a termination date of March 31, 2021 to start a new tenancy in April 2021 because the Tenant sought to have her brother and boyfriend reside at the rental unit, while maintaining tenant status on the new lease.
16. Thus, the parties negotiated a new tenancy agreement with the rent set as \$1,995.00 and the Tenant has been paying this amount between April 2021 and March 2022.
17. The issue with the arrears began in April 2022 when the Landlord advised the Tenant that he was selling the property and that the purchaser would be requiring the rental unit. As of the hearing date, however, the Landlord still owns the rental unit as the condition of vacant possession has not yet been satisfied.
18. The Tenant confirms that she signed a N11 with the Landlord and that she has been paying the rent for the period stated by the Landlord. She also confirmed that the Landlord

would not add her brother and boyfriend to the lease but that the rent (with their shares totalled) equalled \$1,995.00.

19. Based on the evidence before the Board, I find that the tenancy with the rent of \$1,500.00 terminated on March 31, 2021 as per the N11 agreement to terminate the tenancy signed and executed by the parties.
20. I also find that a new tenancy began with the Tenant for the same rental unit effective April 1, 2021 with the lawful monthly rent of \$1,995.00. I say this based on the Tenant's own confirmation.

#### L9 APPLICATION

21. As of the hearing date, the Tenant was still in possession of the rental unit.
22. The lawful rent is \$1,995.00. It is due on the 1st day of each month.
23. Based on the Monthly rent, the daily rent/compensation is \$65.59. This amount is calculated as follows: \$1,995.00 x 12, divided by 365 days.
24. The Tenant has not made any payments since the application was filed.
25. The rent arrears owing to May 31, 2023 are \$27,930.00.
26. The Tenant does not dispute that she has made no payments to the Landlord since the application was filed.
27. She testified that she cannot make any payments because she does not receive any income apart from her Ontario Disability Support Program benefits and her CPP benefits which total approximately \$600.00 each month.
28. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
29. The Landlord collected a rent deposit of \$1,995.00 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.
30. Interest on the rent deposit, in the amount of \$79.01 is owing to the Tenant for the period from April 1, 2021 to May 8, 2023.
31. An order shall issue for the arrears and costs only.

#### **It is ordered that:**

1. The Tenant shall pay to the Landlord \$24,571.71. 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.
2. The Tenant shall also pay the Landlord compensation of \$65.59 per day for the use of the unit starting May 9, 2023 until the date the Tenant moves out of the unit.

3. If the Tenant does not pay the Landlord the full amount owing on or before May 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 31, 2023 at 6.00% annually on the balance outstanding.

**May 19, 2023**  
**Date Issued**

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Sonia Anwar-Ali  
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.

**Schedule 1**  
**SUMMARY OF CALCULATIONS**

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

Rent Owing To Hearing Date	\$26,459.72
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,995.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$79.01
<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$24,571.71</b>
Plus daily compensation owing for each day of occupation starting May 9, 2023	\$65.59 (per day)

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