



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

**Citation:** Carter v Leblanc, 2023 ONLTB 35539

**Date:** 2023-05-09

**File Number:** LTB-L-037804-22

**In the matter of:** 4, 110 King Street Sudbury  
Ontario P3C5G9

**Between:** Alex Carter and Victoria Carter Landlord

**And**

Luc Leblanc Tenant

Alex Carter and Victoria Carter (the 'Landlord') applied for an order to terminate the tenancy and evict Luc Leblanc (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes; and for an order to terminate the tenancy and evict the Tenant because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant; and, the Tenant has been persistently late in paying the Tenant's rent. The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

This application was heard by videoconference on March 22, 2023.

Only the Landlord's legal representative D. McIntosh, the Landlord Alex Carter (AC) and the Landlord's witness Gary Drolet (GD) attended the hearing. As of 11:00am, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. As a result, the hearing proceeded with only the Landlord's evidence.

**Determinations:**

L1 Application

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 \$1,000.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$32.88. This amount is calculated as follows: \$1,000.00 x 12, divided by 365 days.
5. The Tenant has paid \$5,500.00 to the Landlord since the application was filed.
6. The rent arrears owing to March 31, 2023 are \$11,500.00.
7. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,000.00 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.
9. Interest on the rent deposit, in the amount of \$17.55 is owing to the Tenant for the period from January 1, 2021 to March 22, 2023.
10. Section 83 requires that I consider all the circumstances, including the Tenant's and the Landlord's situations to determine if it would be appropriate to grant section 83 relief from eviction. There are significant arrears owing. The Landlord has also advised that the Tenant lives alone and that the Landlord has made attempts to negotiate a repayment plan with the Tenant without success. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenant did not attend the hearing, and thus did not provide any evidence that may be relevant to my determination under s. 83

## L2 Application

11. The Landlord served the Tenant with a Form N8 notice of termination for persistently late payments. The Landlord's Form N8 encompasses from May 2021 through to April 2022. For this period of time, the Tenant was not late in making payments but more accurately, the Tenant simply did not pay the full amount of rent owing for each and every month (as addressed in the Landlord's L1 Application). For this reason, I do not find the Tenant has persistently failed to pay the rent late.
12. The Landlord also served the Tenant with a Form N5 by mail on April 12, 2022 on the basis the Tenant's behaviour has substantially interfered with another tenant's or the Landlord's reasonable enjoyment of the residential complex and/or their lawful rights privileges or interests. This is the second N5 served by the Landlord within the past 6 months. The first

N5 was served by mail on March 30, 2022. The Landlord's first Form N5 alleges multiple events of aggressive behaviour on the part of the Tenant, including but not limited to loud noises and music emanating from the Tenant's rental unit and threats made.

13. The second Form N5 alleges that the Tenant's troublesome behaviour has continued following the 7 day voiding period in the first Form N5. The Landlord's evidence in support of the second Form N5 allegations, however, was somewhat unclear at the hearing, and at times, contradictory. For instance, the Landlord, AC, testified the Tenant broke the front entrance door in or around April 11, 2022. AC elaborated the Tenant "smashed" the door and damaged the locks and latches, in lieu of requesting another entrance key. As a result, he testified the Landlord was forced to replace the door at the Landlord's cost. Later, somewhat in contrast to the events outlined by AC, the Landlord's property manager Gary Drolet (GD) testified the Tenant "*changed the locks*" to the secure, fire-resistant front entrance door to the building. As a result, GD states he was unable to open the door after trying all his keys. He states he then smashed the lock in order to open the door and allow the police to enter and warn the Tenant not to change the locks in the future.
14. The Landlord also testified that on April 8, "tin foil" drug paraphernalia was found in or around the building. The Landlord's evidence was vague as to the location of the purported drug paraphernalia and more importantly, its originating source. In this regard, AC stated he believe the Tenant left these items, as he was not aware of anyone else "*in the building taking drugs*" and thus, it was a "*fair assumption*" to assume the Tenant or his visitors left these items.
15. The onus to prove the allegations rests with the Landlord. Given the few particulars provided and lack of evidence connecting the Tenant to the alleged drug use, I am unable to determine on a balance of probabilities that the Tenant had engaged in the activity alleged. Moreover, given the inconsistencies in the Landlord's testimony and the testimony of the Landlord's property manager regarding the door incident, I am unable to determine on a balance of probabilities that the Tenant caused any damage to the front entrance door.

#### *Utilities*

16. The Landlord's L2 application seeks payment from the Tenant for unpaid utilities in the amount of \$637.51 for the period of time extending from April 2021 through to March 2022. At the hearing, the Landlord produced a statement of account, detailing 12 separate electric utility charges that the Landlord was forced to pay due to the Tenant's non payment. The Landlord submitted it was the Tenant's responsibility to pay utilities under the Lease, and the total of all utility charges was \$637.51. I find the Landlord is entitled to reimbursement of these utility expenditures.

**It is ordered that:**

L1 Application

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:**
  - \$13,701.00 if the payment is made on or before May 20, 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 May 20, 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 May 20, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$10,406.74. 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 \$32.88 per day for the use of the unit starting March 23, 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 May 20, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 21, 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 May 20, 2023, then starting May 21, 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 May 21, 2023.

L2 Application

11. The Tenant shall pay to the Landlord \$637.51, which represents the reasonable out-of-pocket expenses the Landlord has incurred as a result of the unpaid utility costs.

12. If the Tenant does not pay the Landlord the full amount owing on or before May 20, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 21, 2023 at 6.00% annually on the balance outstanding.

**May 9, 2023**

**Date Issued**

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Peter Nicholson

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 November 21, 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 20, 2023**

Rent Owing To May 31, 2023	\$19,000.00
Application Filing Fee	\$201.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$5,500.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<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 the Tenant must pay to continue the tenancy</b>	<b>\$13,701.00</b>

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

Rent Owing To Hearing Date	\$16,723.29
Application Filing Fee	\$201.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$5,500.00
<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	- \$1,000.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$17.55
<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>\$10,406.74</b>
Plus daily compensation owing for each day of occupation starting March 23, 2023	\$32.88 (per day)