



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

**Citation:** IMH POOL XII LP v Guce, 2023 ONLTB 35755

**Date:** 2023-05-08

**File Number:** LTB-L-058542-22

**In the matter of:** 509, 4866 BATHURST ST  
TORONTO ON M2R1X4

**Between:** IMH POOL XII LP Landlord

**And**

Felbrian Guce Tenants  
Krista De la Rama

IMH POOL XII LP (the 'Landlord') applied for an order to terminate the tenancy and evict Felbrian Guce and Krista De la Rama (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

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

The Landlord's Representative, Sharon Harris, and the first-named 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 \$2,751.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$90.44. This amount is calculated as follows: \$2,751.00 x 12, divided by 365 days.
5. The Tenant has paid \$1,227.77 to the Landlord since the application was filed.

6. The rent arrears owing to April 30, 2023 are \$18,880.23.
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 \$2,751.00 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 \$21.67 is owing to the Tenant for the period from January 1, 2023, to April 25, 2023.
10. At the hearing the Tenant testified that he was unable to afford to pay rent since receiving the N4 because of an unexpected wage garnishment of 50% as well as paying other bills, including a \$1,000/month car payment towards an Acura.
11. The Tenant testified that their household income is approximately \$6,500.00/month.
12. The Tenant also testified that he was just made eligible for a rent bank payment, however no documentation was submitted to support his testimony.
13. Because of the low priority the Tenants have given to paying their rent since the N4 was served to them, I am not satisfied that a payment plan would be an appropriate remedy, especially since the Tenants are currently in possession of high-value property, such as a high-end model automobile. The Tenant testified that he was trying to sell the car, however no documentary evidence, such as online advertisements, or emails with dealers was submitted to support this testimony.
14. The Tenant asked for an eviction order to be delayed until June 30, 2023, to allow his children to finish school in their current area. I find that under the circumstances, it would be unfair to grant this amount of relief to the Tenants because it would be prejudicial to the Landlord.
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 Tenant, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

**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:**
  - \$21,817.23 if the payment is made on or before May 24, 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 May 24, 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 May 24, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$15,803.56. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$90.44 per day for the use of the unit starting April 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 May 24, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 25, 2023, at 6.00% annually on the balance outstanding.
8. The Landlord 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 May 24, 2023, then starting May 25, 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 25, 2023.

**May 8, 2023**

**Date Issued**

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Robert Brown

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 25, 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.

\*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

**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 May 24, 2023**

Rent Owing To May 31, 2023	\$22,859.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$1,227.77
<b>Less</b> the amount of the credit that the Tenants are entitled to	- \$0.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$21,817.23</b>

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

Rent Owing To Hearing Date	\$19,618.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$1,227.77
<b>Less</b> the amount of the last month's rent deposit	- \$2,751.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$21.67
<b>Less</b> the amount of the credit that the Tenants are entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$15,803.56</b>
Plus daily compensation owing for each day of occupation starting April 26, 2023	\$90.44 (per day)