



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

**Citation:** Khan v Ettu, 2023 ONLTB 34617

**Date:** 2023-05-05

**File Number:** LTB-L-038779-22

**In the matter of:** Basement, 7066 Gooderham Estate Blvd, Mississauga  
ON L5W1G1

**Between:** Asad Khan Landlords  
Sadia Khan

**And**

Zainab Ettu Tenant

Asad Khan and Sadia Khan (the 'Landlords') applied for an order to terminate the tenancy and evict Zainab Ettu (the 'Tenant') because the

- Tenant did not pay the rent that the Tenant owes.
- Landlords require possession of the rental unit for the purpose of residential occupation

This application was heard by videoconference on March 9, 2023. The first named Landlord and the Tenant attended the hearing.

**Determinations:**

1. At the Tenant had vacated the rental unit before the hearing date, the Landlords' application based on the N12 notice of termination is moot. As such, this order only considers the issue of non-payment of rent.
2. The Landlords served the Tenant with a valid Notice to End Tenancy Early for Nonpayment 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.
3. The Tenant was in possession of the rental unit on the date the application was filed.
4. The Tenant vacated the rental unit on October 31, 2022. Rent arrears are calculated up to the date the Tenant vacated the unit.

5. At the outset of the hearing, the Tenant raised two issues. The first is with respect to the lawful monthly rent and the second was with respect to payments that she allegedly made, that the Landlords have not recorded in their paperwork.

#### LAWFUL RENT

6. The Tenant says that in October 2020, there was a verbal conversation with the Landlords where they agreed to reduce the rent from \$1,600.00 to \$1,400.00 provided that the Tenant completed the snow removal on the property.
7. The Landlords say that there was no agreement to reduce the rent that the Tenant had asked to pay \$200.00 less due to the loss of her job, due to COVID-19 and would make up the difference at a later date.
8. On any application before the Board, the person who alleges any particular incident or event occurred has the burden of leading sufficient evidence to establish that it is more likely than not that their version of events is true. In this case that burden falls on the Tenant. The Tenant did not produce anything in writing to confirm the alleged agreement. Therefore, I find that the Tenant has led insufficient evidence to establish that there was an agreement between the parties to reduce the monthly rent to \$1,400.00.
9. The lawful rent is \$1,600.00. It was due on the 1st day of each month.

#### MISSING PAYMENTS

10. The Tenant alleges that she disputed the amount of arrears as she claims to have made additional payments to the Landlords that they have not reflected receiving. I spent a considerable amount of time canvassing the parties with respect to payments that the Tenant claims to have made and that the Landlords had received.
11. I narrowed the alleged missing payments down to two specific payments. They are:
  - Payment for August 2021 rent, the Landlord records receiving \$600.00 in cash, while the Tenant alleges she paid \$1,300.00 (difference of \$300.00).
  - Payment for February 2022 rent, the Landlord records receiving no payment. The Tenant alleges that she paid \$1,400.00 in cash.
12. The Tenant did not submit any receipt of payment, bank records or confirmation from the Landlord that the funds were received. The Landlords deny that any funds were received.
13. In *Mauti v. Gibbs*, 2019 ONSC 3355 (CanLII), the Divisional Court held at paragraph 27 that while the Landlord bears the burden of proof in a rent arrears application, it is difficult for a Landlord to prove a negative (i.e. non-payment of rent). Therefore, “. . .while the ultimate persuasive burden never shifts, once a landlord denies receiving funds, the

tenant will have an evidentiary burden or a chance to advance some evidence to positively prove that he or she paid rent.

14. On a balance of probabilities, I find that the Tenant owes the Landlords rent for the months of May, June and July 2021. As stated, the Tenant provided no evidence supporting that payment was made and accepted by the Landlords. As such, the Tenant will be ordered to pay the \$300.00 differential from the August 2021 rent and February 2022 rent.
15. The Tenant has paid \$8,100.00 to the Landlords since the application was filed.
16. The rent arrears owing to October 31, 2022 are \$9,252.00.
17. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
18. The Landlords collected a rent deposit of \$1,600.00 from the Tenant and this deposit is still being held by the Landlords. The rent deposit is applied to the arrears of rent because the tenancy terminated. The amount the Landlords owe the Tenant for interest on the deposit is \$40.57. This amount shall be deducted from the total owing.

**It is ordered that:**

1. The tenancy between the Landlords and the Tenant is terminated as of October 31, 2022, the date the Tenant moved out of the rental unit
2. The Tenant shall pay to the Landlords \$7,797.43. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application. The rent deposit and interest the Landlords owes on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
3. If the Tenant does not pay the Landlords the full amount owing on or before May 16, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 17, 2023 at 6.00% annually on the balance outstanding.

**May 5, 2023**

**Date Issued**

\_\_\_\_\_  
Curtis Begg

Member, Landlord and Tenant Board

15 Grosvenor St, 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.

\*Note: When the LTB 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 Tenant must pay as the tenancy is terminated**

Rent Owing To Move Out Date	\$17,352.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlords since the application was filed	- \$8,100.00
<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	- \$1,600.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$40.57
<b>Less</b> the amount the Landlords owe 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 Landlords</b>	<b>\$7,797.43</b>