



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

**Citation:** Skyline Living v Michael Benny, 2023 ONLTB 33882

**Date:** 2023-05-01

**File Number:** LTB-L-068212-22

**In the matter of:** 313, 45 OXFORD ST STRATFORD  
ON N5A0H1

**Between:** Skyline Living Landlord

**And**

Michael Benny Tenant

Skyline Living (the 'Landlord') applied for an order to terminate the tenancy and evict Michael Benny (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on April 12, 2023.

The Landlord's agent M. Ceglie 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 \$1,587.69. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$52.20. This amount is calculated as follows: \$1,587.69 x 12, divided by 365 days.

5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to April 30, 2023 are \$11,607.92.
7. The Landlord is entitled to \$68.88 to reimburse the Landlord for administration charges and \$0.00 for bank fees the Landlord incurred as a result of 5 cheque given by or on behalf of the Tenant which was returned NSF.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$1,587.69 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.
10. Interest on the rent deposit, in the amount of \$37.73 is owing to the Tenant for the period from May 1, 2022 to April 12, 2023.

## Section 82

11. 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.
12. The Landlord's agent stated the Landlord has tried to reach out to the Tenant for a repayment plan, without success. The Tenant acknowledged the substantial arrears owing, noting he has had other financial commitments which have led to the arrears. The Tenant lives alone and advised he has had health issues and sporadic employment. At the hearing, the Tenant requested a repayment plan of approximately 18 months. The Tenant's disclosed monthly income and failure to pay any rent over several months, however, suggests an inability and/or unwillingness to comply with a repayment plan moving forward. In the event eviction were ordered, the Tenant requested 20 days to final alternative accommodations.
13. I have considered all of the disclosed circumstances in accordance with subsection 83 of the *Residential Tenancies Act, 2006* (RTA), 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 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:**

- \$13,450.49 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 \$9,276.09. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. 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 \$52.20 per day for the use of the unit starting April 13, 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.

**May 1, 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	\$13,195.61
Application Filing Fee	\$186.00
NSF Charges	\$68.88
<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 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>\$13,450.49</b>

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

Rent Owing To Hearing Date	\$10,646.63
Application Filing Fee	\$186.00
NSF Charges	\$68.88
<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	- \$1,587.69
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$37.73
<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>\$9,276.09</b>
Plus daily compensation owing for each day of occupation starting April 13, 2023	\$52.20 (per day)