



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

**Citation:** Melvin Apartments Inc. v Brittany Motyka, 2023 ONLTB 32529

**Date:** 2023-04-28

**File Number:** LTB-L-056699-22

**In the matter of:** 1208, 221 MELVIN AVE  
HAMILTON ON L8H2K1

**Between:** Melvin Apartments Inc. Landlord

**And**

Brittany Motyka Tenant

Melvin Apartments Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Brittany Motyka (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 13, 2023. Only the Landlord's agent, Rahul Brahmhatt, attended the hearing.

As of 10:00am, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

### **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 as of February 1, 2023 is \$1,452.22. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$47.74. This amount is calculated as follows: \$1,452.22 x 12, divided by 365 days.
5. The Tenant has paid \$4,350.00 to the Landlord since the application was filed.
6. The rent arrears owing to April 30, 2023 are \$7,457.46.

7. The NSF charges claimed by the Landlord related to electronic fund transfers rather than NSF cheques. Since subsection 87(5) of the *Residential Tenancies Act, 2006*, does not provide a remedy for electronic fund transfers that fail due to non-sufficient funds, the Landlord's claim for NSF charges is denied.
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 \$1,400.00 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.
10. Interest on the rent deposit, in the amount of \$59.76 is owing to the Tenant for the period from January 21, 2021 to April 13, 2023.
11. The Tenant did not attend the hearing to make submissions regarding their unique circumstances to consider any relief from eviction.
12. The Landlord has been knocking on the Tenants door and had also sent the Tenant a letter with a payment plan proposal form for the Tenant to fill out and return to the Landlord. The Tenant did not return the form and they did not reach out to the Landlord to negotiate any terms for a repayment plan.
13. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of 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 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:**
  - \$7,643.46 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$9,095.68 if the payment is made on or before May 9, 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 9, 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 9, 2023**

5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$5,352.10. 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 \$47.74 per day for the use of the unit starting April 14, 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 9, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 10, 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 9, 2023, then starting May 10, 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 10, 2023.

2023 ONLTB 32529 (CanLII)

**April 28, 2023**

**Date Issued**

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Terri van Huisstede  
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 10, 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before April 30, 2023**

|                              |             |
|------------------------------|-------------|
| Rent Owing To April 30, 2023 | \$11,807.46 |
| 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 | - \$4,350.00      |
| <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 credit that the Tenant is entitled to                    | - \$0.00          |
| <b>Total the Tenant must pay to continue the tenancy</b>                               | <b>\$7,643.46</b> |

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 9, 2023**

|  |                   |
|--|-------------------|
| Rent Owing To May 31, 2023   | \$13,259.68       |
| Application Filing Fee   | \$186.00          |
| NSF Charges  | \$45.00           |
| <b>Less</b> the amount the Tenant paid to the Landlord since the application was filed | - \$4,350.00      |
| <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 credit that the Tenant is entitled to                    | - \$0.00          |
| <b>Total the Tenant must pay to continue the tenancy</b>                               | <b>\$9,095.68</b> |

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

|  |                      |
|--|----------------------|
| Rent Owing To Hearing Date   | \$10,975.86          |
| 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 | - \$4,350.00         |
| <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                                | - \$1,400.00         |
| <b>Less</b> the amount of the interest on the last month's rent deposit                | - \$59.76            |
| <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>\$5,352.10</b>    |
| Plus daily compensation owing for each day of occupation starting April 14, 2023       | \$47.74<br>(per day) |