



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

Citation: Homestead Land Holdings Limited v Howarth, 2023 ONLTB 33174

Date: 2023-04-26 **File Number:**
LTB-L-045547-22-RV

In the matter of: 505, 100 QUEEN ST N
KITCHENER ON N2H2H6

Between: Homestead Land Holdings Limited Landlord

And

Patrick Howarth Tenant

Homestead Land Holdings Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Patrick Howarth (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-045547-22 issued on March 23, 2023.

On March 23, 2023, the Landlord requested a review of the order and that the order be stayed until the request to review the order is resolved

On March 24, 2023, interim order LTB-L-045547-22-RV-IN was issued staying the order issued on March 23, 2023.

The Landlord's request was heard in by videoconference on April 17, 2023.

Only the Landlord's Legal Representative, Tanya Rose, attended the hearing.

As of 9:30 a.m., 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:

Landlord's Review Request

1. The Landlord's Legal Representative advised the Board that she did not attend the hearing on March 13, 2023 due to human error. She explained that her and her colleagues had multiple hearings in multiple rooms that day and had mixed up her schedule. The next day she wrote to the Board asking to reschedule and filed this review request when she received the order.
2. Based on the submissions made at the hearing and interpreting the phrase "reasonably able to participate" broadly, I find that the Landlord was not reasonably able to participate at the hearing on March 13, 2023. Accordingly, the Landlord's request to review the March 23, 2023 order is granted and the Landlord's application was re-heard.

L1 Application

3. 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.
4. As of the hearing date, the Tenant was still in possession of the rental unit.
5. The lawful rent is \$1,742.66. It is due on the 1st day of each month.
6. Based on the Monthly rent, the daily rent/compensation is \$57.29. This amount is calculated as follows: $\$1,742.66 \times 12$, divided by 365 days.
7. The Tenant has not made any payments since the application was filed.
8. The rent arrears owing to April 30, 2023 are \$18,814.74.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. The Landlord collected a rent deposit of \$1,703.65 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.
11. Interest on the rent deposit, in the amount of \$8.87 is owing to the Tenant for the period from February 1, 2023 to April 17, 2023.
12. 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 Landlord's request to review order LTB-L-045547-22, issued on March 23, 2023, is granted. The order is cancelled and replaced by the following.
2. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
3. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$19,000.74 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$20,743.40 if the payment is made on or before May 7, 2023. See Schedule 1 for the calculation of the amount owing.
4. 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 7, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
 5. **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 7, 2023**
 6. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$16,519.49. 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.
 7. The Tenant shall also pay the Landlord compensation of \$57.29 per day for the use of the unit starting April 18, 2023 until the date the Tenant moves out of the unit.
 8. If the Tenant does not pay the Landlord the full amount owing on or before May 7, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 8, 2023 at 6.00% annually on the balance outstanding.
 9. If the unit is not vacated on or before May 7, 2023, then starting May 8, 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 8, 2023.

April 26, 2023

Date Issued

Khalid Akram

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 8, 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 | \$18,814.74 |
| Application Filing Fee | \$186.00 |
| NSF Charges | \$0.00 |
| Less the amount the Tenant paid to the Landlord since the application was filed | - \$0.00 |
| Less the amount the Tenant paid into the LTB since the application was filed | - \$0.00 |
| Less the amount the Landlord owes the Tenant for an{abatement/rebate} | - \$0.00 |
| Less the amount of the credit that the Tenant is entitled to | - \$0.00 |
| Total the Tenant must pay to continue the tenancy | \$19,000.74 |

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 7, 2023

| | |
|--|--------------------|
| Rent Owing To May 31, 2023 | \$20,557.40 |
| Application Filing Fee | \$186.00 |
| NSF Charges | \$0.00 |
| Less the amount the Tenant paid to the Landlord since the application was filed | - \$0.00 |
| Less the amount the Tenant paid into the LTB since the application was filed | - \$0.00 |
| Less the amount the Landlord owes the Tenant for an{abatement/rebate} | - \$0.00 |
| Less the amount of the credit that the Tenant is entitled to | - \$0.00 |
| Total the Tenant must pay to continue the tenancy | \$20,743.40 |

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

| | |
|----------------------------|-------------|
| Rent Owing To Hearing Date | \$18,046.01 |
| Application Filing Fee | \$186.00 |

| | |
|--|----------------------|
| NSF Charges | \$0.00 |
| Less the amount the Tenant paid to the Landlord since the application was filed | - \$0.00 |
| Less the amount the Tenant paid into the LTB since the application was filed | - \$0.00 |
| Less the amount of the last month's rent deposit | - \$1,703.65 |
| Less the amount of the interest on the last month's rent deposit | - \$8.87 |
| Less the amount the Landlord owes the Tenant for an {abatement/rebate} | - \$0.00 |
| Less the amount of the credit that the Tenant is entitled to | - \$0.00 |
| Total amount owing to the Landlord | \$16,519.49 |
| Plus daily compensation owing for each day of occupation starting April 18, 2023 | \$57.29 (per day) |