



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

**Citation:** Marie Kamche v Patricia Kalala, 2023 ONLTB 33184

**Date:** 2023-04-25

**File Number:** LTB-L-014233-23

**In the matter of:** 406, 4062 LAWRENCE AVE E  
SCARBOROUGH ON M1E4V5

**Between:** Marie Kamche Landlord

**And**

Patricia Kalala Tenant

Marie Kamche (the 'Landlord') applied for an order to terminate the tenancy and evict Patricia Kalala (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on April 17, 2023.

The Landlord, the Landlord's representative A. Small, the Tenant and the Tenant's representative T. Sivapatham attended the hearing.

### **Determinations:**

#### Preliminary Matters

1. As a preliminary matter, the Tenant submits the Landlord served an invalid Form N4. In particular, the Tenant submits the Landlord incorrectly provided the Tenant with a credit of \$1.00 in January 2023 on the Form N4, when the Tenant should have only been provided with a credit of \$0.90, thus resulting in a 10-cent discrepancy in the Tenant's favour. The Tenant submits she was confused as a result, however there was no correspondence or other documentation submitted into evidence showing efforts by the Tenant to seek clarification – or a correction - from the Landlord.
2. Subsection 43(2) of the Act provides that a notice of termination must set out the reasons and details respecting the termination. Pursuant to the Divisional Court's decision in *Ball v. Metro Capital Property*, [2002] O.J. No. 5931 ["Ball"], a notice that fails to provide sufficient details is void.

3. In accordance with *Ball*, the Tenant submits the Landlord's application should be dismissed. At the hearing, I found the Landlord served a valid N4 and proceeded to hear the merits of the Landlord's application. I do not find it believable the Tenant was confused as a result of the alleged discrepancy so as to not know the case to be met in the Landlord's application. The alleged error was minimal (10 cents) in nature - and in the Tenant's favor. In short, I find the Tenant was made aware of the specific allegations to know the case that must be met; to decide whether to dispute the allegations; and to consider whether to void the notice.

Moreover, although the Tenant provided evidence of various e-transfer payments to the Landlord in December 2022, there was no ledger or other statement of account showing the Landlord had, in fact, erred by 10 cents. The timing of the e-transfer payments submitted preceded the period of time covered in the Landlord's Form N4, which claimed arrears owing commencing in January 2023. It was also admitted there were no payments made after the notice was served.

4. Lastly, the Tenant submits the Form N4 was invalid because the Tenant was confused as to the proper Landlord due to a *Notice of Sale Under Charge* received in March 2023. The Landlord submitted she is legal owner of the property and acknowledged that power of sale proceedings are underway by the mortgagee. Based upon the submissions made, I do not find there is an error in the noted landlord on the Form N4, or that a change of Landlord has taken place as a result of the power of sale proceedings. I therefore find the Landlord served a valid Form N4
5. 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.
6. As of the hearing date, the Tenant was still in possession of the rental unit.
7. The lawful rent is \$1,960.00. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$64.44. This amount is calculated as follows: \$1,960.00 x 12, divided by 365 days.
9. The Tenant has not made any payments since the application was filed.
10. The rent arrears owing to April 30, 2023 are \$7,839.00.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. There is no last month's rent deposit.

### Section 83

13. 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.

14. The Landlord noted there are significant arrears of rent, causing significant financial hardship to the Landlord, with power of sale proceedings having already commenced. The Landlord's representative noted the Tenant has been non-communicative with the Landlord and the Landlord's representative in their attempts to discuss payment. The Landlord seeks an eviction date as soon as possible.
15. The Tenant has lived at the rental unit with her family for over 1 year and indicated she is working. The Tenant further indicated she can make payments and can borrow funds from others but seeks until the end of May 2023. There are substantial arrears owing and although the Tenant indicated she was working, her actual monthly income was unclear. Moreover, the Tenant's failure to pay any rent over several months, suggests an inability and/or unwillingness to comply with a repayment plan moving forward.
16. I have considered all of the disclosed circumstances in accordance with subsection 83 of the *Residential Tenancies Act, 2006* (RTA), including the circumstances noted above, 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:**
  - \$8,025.00 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$9,985.00 if the payment is made on or before May 10, 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 10, 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 10, 2023**

5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$7,160.48. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$64.44 per day for the use of the unit starting April 18, 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 10, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 11, 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 10, 2023, then starting May 11, 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 11, 2023.

**April 25, 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 11, 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	\$7,839.00
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	- \$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>\$8,025.00</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 10, 2023**

Rent Owing To May 31, 2023	\$9,799.00
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	- \$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>\$9,985.00</b>

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

Rent Owing To Hearing Date	\$6,974.48
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	- \$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	- \$
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord</b>	<b>\$7,160.48</b>
Plus daily compensation owing for each day of occupation starting April 18, 2023	\$64.44 (per day)