



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Jones v Mellis, 2023 ONLTB 33129

**Date:** 2023-04-24

**File Number:** LTB-L-053551-22

**In the matter of:** 2089 Prospect Street  
Burlington ON L7R1Z5

**Between:** Tammy Jones Landlord

**And**

Nadine Mellis and Tianna Mellis Tenant

Tammy Jones (the 'Landlord') applied for an order to terminate the tenancy and evict Nadine Mellis and Tianna Mellis (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 30, 2023. The Landlord attended the hearing. As of 4:26 pm, neither of the Tenants were 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.

### Preliminary issue:

1. The Landlord filed an amended L1 application on February 14, 2023. The Landlord requested to amend the rental unit address from 2001 Prospect St. to 2089 Prospect St. The Landlord stated that a copy of the amended L1 application was served on the Tenants on or about October 12, 2022 to where the mail is normally delivered to the Tenants.
2. The L1 application is amended to reflect the rental unit address as 2089 Prospect St. I find there is no prejudice to the Tenants. The address on the amended L1 application matches the rental unit address noted on the N4 notice issued to the Tenants. I accept the Landlord's submission that the amended L1 application was served on the Tenants.

### 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 \$1,950.00. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$64.11. This amount is calculated as follows: \$1,950.00 x 12, divided by 365 days.
5. The Tenant has paid \$1,450.00 to the Landlord since the application was filed.
6. The rent arrears owing to March 31, 2023 are \$14,150.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,950.00 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.
9. Interest on the rent deposit, in the amount of \$44.61 is owing to the Tenant for the period from May 1, 2022 to March 30, 2023.
10. The Landlord stated that she attempted to negotiate a payment for the arrears with the Tenants without success. The Landlord stated she had discussions with the Tenants in December 2022, January 2023, and February 2023 regarding setting up a payment plan for the arrears but these discussions were unsuccessful. On March 20, 2023, the Landlord stated that the Tenants advised her that they were unable to commit to a payment plan for the arrears because they did not foresee additional money becoming available soon but stated they would pay the Landlord when money became available.
11. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenants. I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. I find the arrears are significant and the Tenants did not attend the hearing to proffer any evidence to support preserving the tenancy or their ability to pay the arrears and ongoing monthly rent.

**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:**
  - \$16,396.00 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$18,346.00 if the payment is made on or before May 5, 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 5, 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 5, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$12,314.69. 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.
6. The Tenant shall also pay the Landlord compensation of \$64.11 per day for the use of the unit starting March 31, 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 5, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 6, 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 5, 2023, then starting May 6, 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 6, 2023.

**April 24, 2023**  
**Date Issued**

\_\_\_\_\_  
Kimberly Parish  
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 6, 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 April 30, 2023**

|  |                    |
|--|--------------------|
| Rent Owing To April 30, 2023   | \$17,550.00        |
| Application Filing Fee   | \$186.00           |
| NSF Charges  | \$110.00           |
| <b>Less</b> the amount the Tenant paid to the Landlord since the application was filed | - \$1,450.00       |
|  |                    |
|  |                    |
|  |                    |
| <b>Total the Tenant must pay to continue the tenancy</b>                               | <b>\$16,396.00</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 5, 2023**

|  |                    |
|--|--------------------|
| Rent Owing To May 31, 2023   | \$19,500.00        |
| Application Filing Fee   | \$186.00           |
| NSF Charges  | \$110.00           |
| <b>Less</b> the amount the Tenant paid to the Landlord since the application was filed | - \$1,450.00       |
| <b>Total the Tenant must pay to continue the tenancy</b>                               | <b>\$18,346.00</b> |

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

|  |                      |
|--|----------------------|
| Rent Owing To Hearing Date   | \$15,535.89          |
| Application Filing Fee   | \$186.00             |
| NSF Charges  | \$110.00             |
| <b>Less</b> the amount the Tenant paid to the Landlord since the application was filed | - \$1,450.00         |
| <b>Less</b> the amount of the last month's rent deposit                                | - \$1,950.00         |
| <b>Less</b> the amount of the interest on the last month's rent deposit                | - \$44.61            |
| <b>Total amount owing to the Landlord</b>  | <b>\$12,387.28</b>   |
| Plus daily compensation owing for each day of occupation starting March 31, 2023       | \$64.11<br>(per day) |