



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

Citation: Yan v Van Alphen, 2023 ONLTB 30436

Date: 2023-04-14

File Number: LTB-L-040190-22

In the matter of: 133, 1035 VICTORIA RD S
GUELPH ON N1L0H5

Between: Bin Yan Landlord

And

Marty Van Alphen and Melissa Mackinnon Tenants

Bin Yan (the 'Landlord') applied for an order to terminate the tenancy and evict Marty Van Alphen and Melissa Mackinnon (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on February 16, 2023.

The Landlord and the Tenants attended the hearing.

The Tenants declined to meet with Tenant Duty Counsel at the outset of the hearing block. The Tenants requested to speak with Tenant Duty Counsel after the hearing block was underway however Tenant Duty Counsel was unavailable at that time.

Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenants 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 Tenants were still in possession of the rental unit.
3. The lawful rent is \$2,178.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$71.61. This amount is calculated as follows: \$2,178.00 x 12, divided by 365 days.
5. The Tenants have paid \$6,400.00 to the Landlord since the application was filed.
6. The rent arrears owing to February 28, 2023 are \$12,831.00.

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 \$2,100.00 from the Tenants 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 \$80.29 is owing to the Tenants for the period from January 30, 2020 to February 16, 2023.

Section 83 Consideration

10. The Tenant M MacKinnon testified that they were expecting three estate settlements to be released in the next two months and the Tenants would be able to pay all of the arrears at that time. The Tenants have 2 children, the youngest will start school in September and the oldest has special needs and is home-schooled. The Tenants testified that they would like to maintain their tenancy.
11. The Landlord objected to any payment plan.
12. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until May 31, 2023 pursuant to subsection 83(1)(b) of the Act. The short postponement will allow the Tenants to pay the rental arrears if they receive the anticipated estate settlements and will not unreasonably prejudice the Landlord.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$17,373.00 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$19,551.00 if the payment is made on or before May 31, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after May 31, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before May 31, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$9,804.47. 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 Tenants. See Schedule 1 for the calculation of the amount owing.

6. The Tenants shall also pay the Landlord compensation of \$71.61 per day for the use of the unit starting February 17, 2023 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before April 25, 2023, the Tenants will start to owe interest. This will be simple interest calculated from April 26, 2023 at 6.00% annually on the balance outstanding.
8. The Landlord or the Tenants 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 31, 2023, then starting June 1, 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 June 1, 2023.

2023 ONLTB 30436 (CanLII)

April 14, 2023

Date Issued

Heather Kenny
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 December 1, 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 Tenants 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	\$23,587.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$6,400.00

Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$17,373.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before May 31, 2023

Rent Owing To May 31, 2023	\$25,765.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$6,400.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$19,551.00

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

Rent Owing To Hearing Date	\$18,198.76
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$6,400.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$2,100.00
Less the amount of the interest on the last month's rent deposit	- \$80.29
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total amount owing to the Landlord	\$9,804.47
Plus daily compensation owing for each day of occupation starting February 17, 2023	\$71.61 (per day)