



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

**Citation:** Bassetti v Mullin, 2023 ONLTB 30654

**Date:** 2023-04-13

**File Number:** LTB-L-023978-22

**In the matter of:** 6, 295 CEDAR ST  
SUDBURY ON P3B1M8

**Between:** Georgio Bassetti Landlord

**And**

Zachery Mullin Tenant

Georgio Bassetti (the 'Landlord') applied for an order to terminate the tenancy and evict Zachery Mullin (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes and because the Tenant has been persistently late in paying rent.

This application was heard by videoconference on March 22, 2023.

The Landlord's representative A. Friel and the Tenant attended the hearing.

### **Determinations:**

N4/L1 Application

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 \$1,037.30. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$34.10. This amount is calculated as follows: \$1,037.30 x 12, divided by 365 days.

5. The Tenant has paid \$9,039.00 to the Landlord since the application was filed.
6. The rent arrears owing to March 31, 2023 are \$5,216.90. The Tenant does not dispute the arrears owing.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.
9. 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. The Landlord's representative seeks eviction, noting the Landlord's advanced age, health challenges, and the stress caused by the Tenant's history of non-payments. The Tenant did not dispute the arrears owing, but stated his employment was impacted by the pandemic in 2020. The Tenant has resided in the rental unit with his daughter since 2016 and indicated can pay all the arrears owing by way of a lump sum payment. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and given the Tenant's assertion that he can pay all the arrears owing by way of a lump sum payment, I find that it would not be unfair to postpone the (voidable) eviction date to April 30, 2023 pursuant to subsection 83(1)(b) of the Act

#### N8/L2 Application

1. The Landlord's N8/L2 application was filed in April 2022. The Landlord's Form N8 contains a termination date of June 30, 2022 and was deemed served on April 9, 2022.
2. Rent is due on the 1<sup>st</sup> day of the month. From April 2021 through to April 2022, rent was paid late for 8 months. I therefore find the Tenant has persistently failed to pay the rent on the date it was due.
3. The Tenant indicated rent is sometimes paid late as he receives rent on the last day of the month, which may fall on a non-business day. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, including the impact of the late payments on the Landlord, and find it would not be unfair to grant relief from eviction under the Landlord's L2 Application provided the Tenant makes timely payments on or before the 1<sup>st</sup> business day of the month.

#### **It is ordered that:**

#### N4L1 Application

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:**
  - \$6,440.20 if the payment is made on or before April 30, 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 April 30, 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 April 30, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$5,115.80. 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 \$34.10 per day for the use of the unit starting March 23, 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 April 24, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 25, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before April 30, 2023, then starting May 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 1, 2023.

N8/L2 Application

10. In the event the Tenant voids the order as set out in paragraph 2 of the order above,
  - (i) the Tenant shall pay rent to the Landlord for the months of May 2023 through to April 2024, on or before the 1<sup>st</sup> business day of each and every month
  - (ii) If the Tenant fails to make any payment in accordance with paragraph 10(i) of this order, the Landlord may, without notice to the Tenant, apply to the Board pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant. The Landlord must make this application no later than 30 days after the Tenant's breach of paragraph 10(i) of this order.



**April 13, 2023**

**Date Issued**

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 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.

\*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	\$15,293.20
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	- \$9,039.00
<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>\$6,440.20</b>

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

Rent Owing To Hearing Date	\$13,968.80
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	- \$9,039.00
<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>\$5,115.80</b>
Plus daily compensation owing for each day of occupation starting March 23, 2023	\$34.10 (per day)