



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Xue v Kaufman, 2023 ONLTB 30541

**Date:** 2023-04-11

**File Number:** LTB-L-051423-22

**In the matter of:** 1, 1344 AVENUE RD  
TORONTO ON M5N2H2

**Between:** Ming xing Xue Landlord

**And**

Justin Kaufman Tenant

Ming xing Xue (the 'Landlord') applied for an order to terminate the tenancy and evict Justin Kaufman (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 28, 2023 at 09:00 am.

The Landlord Representative Allistar Trent and the Tenant Representative Joseph Behar attended the hearing.

### 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 \$2,500.00. It is due on the 15th day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$82.19. This amount is calculated as follows: \$2,500.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The Tenant does not dispute that the Landlord's evidence that the rent arrears owing to April 15, 2023 were \$27,500.00.
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 \$2,500.00 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 \$58.42 is owing to the Tenant for the period from October 14, 2020 to March 28, 2023.

### **Tenant section 83 evidence and submissions**

10. The Tenant's representative submitted that the reason for the arrears accumulating was due to the Tenant's unemployment which was no longer an issue. In support of this the Tenant Representative entered in evidence an employment contract dated March 17, 2023 with work scheduled to commence on April 03, 2023.
11. The Tenant Representative submitted that the Tenant had a genuine intent to maintain the Tenancy and proposed a payment plan which would see the Tenant paying the rent in full and on time commencing on April 16, 2023, and an initial lump sum payment of towards the arrears of \$7,500.00 by April 30, 2023 and regular payments on or before the 30<sup>th</sup> of each month thereafter until the arrears were paid in full.
12. It was the Tenant Representatives final submission that should a payment plan not be ordered that a delay in eviction to May 16, 2023 be granted to give the Tenant time to secure financing and or find another rental property.

### **Landlord section 83 evidence and submissions**

13. The Landlord Representative submitted that the contract that the Tenant Representative entered in evidence was a conditional on the client agreeing to the price and payment structure proposed by the Tenant. Further, it was their opinion that the arrears had been accumulating since August 2022 with no response or any effort on part of the Tenant to pay back the arrears. It was also their opinion that a payment plan at this point would be prejudicial to the Landlord and the one proposed, without a defined repayment amount for each month, could not be accepted.
14. 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 16, 2023 pursuant to subsection 83(1)(b) of the Act.
15. Given the evidence and testimony before me I am not satisfied that the Tenant's proposed payment plan is reasonable. I am in agreement with the Landlord Representative that the lack of communication on part of the Tenant and lack of effort to pay the substantial arrears coupled with the Tenant's uncertainty of employment make the plan proposed uncertain. That said, I am satisfied that delay in eviction to give the Tenant time to void the arrears and or find a new rental property is warranted.

### **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:**

- \$27,686.00 if the payment is made on or before April 15, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

- \$30,186.00 if the payment is made on or before May 16, 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 16, 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 16, 2023**
  5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$23,565.87. 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 \$82.19 per day for the use of the unit starting March 29, 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 22, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 23, 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 16, 2023, then starting May 17, 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 17, 2023.

**April 11, 2023**

**Date Issued**

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Kelly Delaney

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 17, 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 16, 2023**

Rent Owing To April 16, 2023	\$27,500.00
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>\$27,686.00</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 16, 2023**

Rent Owing To May 16, 2023	\$30,000.00
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>\$30,186.00</b>

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

Rent Owing To Hearing Date	\$25,938.39
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	- \$2,500.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$58.42
<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>\$23,565.97</b>
Plus daily compensation owing for each day of occupation starting March 29, 2023	\$82.19 (per day)