



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

**Citation:** Armanios v Viveiros, 2023 ONLTB 30449

**Date:** 2023-04-11

**File Number:** LTB-L-035103-22

**In the matter of:** 2, 65 STEDFORD CRES  
BRAMPTON ON L7A4P7

**Between:** Eiriny Hanna and Simon Armanios

Landlords

**And**

Michael Francisco Viveiros

Tenant

Eiriny Hanna and Simon Armanios (the 'Landlords') applied for an order to terminate the tenancy and evict Michael Francisco Viveiros (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by video teleconference on March 23, 2023 on VC line 104. The Landlord Simon Armanios attended the hearing on behalf of both Landlords. The Landlord's legal representative Brenda Rizzo attended the Hearing. The Tenant Michael Francisco Viveiros attended the hearing and spoke with duty counsel prior to the hearing.

**Determinations:**

1. The Landlords served the Tenant with a valid Notice to End Tenancy Early for Nonpayment 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 \$1,695.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$55.73. This amount is calculated as follows: \$1,695.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.

6. The rent arrears owing to March 31, 2023 are \$22,035.00.
7. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlords collected a rent deposit of \$1,695.00 from the Tenant and this deposit is still being held by the Landlords. 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 \$68.64 is owing to the Tenant for the period from February 1, 2021 to March 23, 2023.

#### N4 notice

10. The Tenant stated he did not receive a copy of the N4 Notice to End Your Tenancy for Non-Payment of Rent ("N4 notice"). This was refuted by the Landlord Simon Armanios ("Mr. Armanios") who stated he hand delivered the N4 notice to the Tenant at the rental unit on May 13, 2022. On a balance of probabilities, I accept the Landlord's evidence which I found to be credible and supported by the Certificate of Service. I am not persuaded by the Tenant's testimony as this issue was not raised by the Tenant until his testimony had almost concluded.

#### Section 82 issues

11. The Tenant attempted to raise maintenance issues pursuant to s. 82 of the *Residential Tenancies Act, 2006* (the "Act"). The Tenant did not provide any disclosure prior to the hearing regarding the s. 82 issues the Tenant intends to raise at the hearing. There was no response provided by the Tenant when he was asked why he had not provided any documentation disclosing the s. 82 issues prior the hearing. Therefore, I did not allow the Tenant to raise s. 82 issues at the hearing.

#### Negotiation of repayment of arrears

12. Mr. Armanios stated near the end of September 2022, he met the Tenant at the residential complex to discuss a repayment of the arrears and the Tenant advised him that he required two weeks to repay the arrears. Mr. Armanios stated that no payments were made and numerous attempts to negotiate a repayment of arrears with the Tenant were unsuccessful.
13. The Tenant stated he corresponded with Mr. Armanios via text message regarding a repayment of the arrears but Mr. Armanios responded that he did not want the Tenant to continue living there. The Tenant stated he last paid rent to the Landlords approximately one year ago. The Tenant stated when he met with Mr. Armanios at the residential complex at the end of September 2022, Mr. Armanios took the Tenant's phone and threw it away which Mr. Armanios did not concede to. The Tenant stated he had no way to contact the Landlords as the email address and telephone number for the Landlords was stored in

his phone. The Tenant stated he previously paid his monthly rent by e-transfer. The Tenant did not dispute that his telephone was replaced in October 2022. When the Tenant was asked why he had not paid his rent prior to September 2022, there was no explanation provided and this was put to the Tenant a few times. He further stated that he was in the hospital due to a health issue from November 2022 – January 2023 but produced no documentary evidence to support this. The Tenant stated he wants to enter into a repayment plan with the Landlords for the arrears.

14. Mr. Armanios did not consent to a repayment plan. Mr. Armanios stated the Landlords have experienced financial hardship due to the non-payment of rent. He stated that the Landlords are at risk of losing the residential complex because they cannot pay the property taxes for their primary residence and the residential complex. Mr. Armanios requested a standard order.
15. The Tenant requested 60 days to be able to find another place to move to.

### Analysis

16. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, including 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.
17. I found credibility issues with the Tenant's testimony and I do not find it to be persuasive. The Tenant provided no explanation why he had not paid the monthly rent from March 2022 until his phone was allegedly thrown away by one of the Landlords in September 2022, despite this question being put to the Tenant a few times. The Tenant stated he had previously paid his monthly rent to the Landlords by e-transfer. Therefore, I do not accept that the Tenant could not pay the monthly rent because he did not have the contact information for the Landlords around the end of September 2022. The Tenant did not provide any testimony which supports that he took any steps to mitigate this issue. I find if the Tenant previously paid the monthly rent by e-transfer, the Tenant's bank records would contain the Landlords email address and the rent could resume being paid by e-transfer. The Tenant stated he corresponded with Mr. Armanio by text message to negotiate a repayment of the arrears but the Tenant did not produce a copy of the text message correspondence to support that Mr. Armanio no longer wanted the Tenant to continue living at the rental unit. Further, the Tenant has not produced any documentary evidence to support that he was hospitalized from November 2022 – January 2023 and therefore I am not persuaded this is the reason he was unable to pay the monthly rent during this time.
18. I find the Tenant has not made any good faith attempts to pay the Landlords the monthly rent since March 2022. The arrears are significant and no payments have been made since the application was filed. I accept Mr. Armanios submission that this has created undue financial hardship for the Landlords paying for the property taxes on two properties. I find the prejudice to the Landlords outweighs the prejudice to the Tenant.

**It is ordered that:**

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**
  - \$23,916.00 if the payment is made on or before April 22, 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 22, 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 22, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlords \$20,044.15. 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 Landlords owe 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 Landlords compensation of \$55.73 per day for the use of the unit starting March 24, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlords 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. If the unit is not vacated on or before April 22, 2023, then starting April 23, 2023, the Landlords 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 Landlords on or after April 23, 2023.

2023 ONLTB 30449 (CanLI)

**April 11, 2023**

Member, Landlord and Tenant Board

**Date Issued**

Kimberly Parish

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 October 23, 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 22, 2023**

Rent Owing To April 30, 2023	\$23,730.00
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>Total the Tenant must pay to continue the tenancy</b>	<b>\$23,916.00</b>

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

Rent Owing To Hearing Date	\$21,621.79
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 of the last month's rent deposit	- \$1,695.00
<b>Less</b> the amount of the interest on the last month's rent deposit from February 1, 2021 – March 23, 2023	- \$68.64
<b>Total amount owing to the Landlord</b>	<b>\$20,044.15</b>
Plus daily compensation owing for each day of occupation starting <b>March 24, 2023</b>	\$55.73 (per day)