



## **Order under Section 69 and 88.2 Residential Tenancies Act, 2006**

**Citation:** Elsohemy v Henry, 2023 ONLTB 29996

**Date:** 2023-04-05

**File Number:** LTB-L-027106-22

**In the matter of:** 1317 Farmstead Drive  
Milton ON L9E1K9

**Between:** Haseeb Kayani Landlords  
Mariam Elsohemy

**And**

Mobin Khan Tenants  
Tiffany Henry

The Landlords applied for an order requiring Mobin Khan and Tiffany Henry (the 'Tenants') to pay the Landlords' reasonable out-of-pocket expenses that are the result of the Tenants' failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

The Landlords also applied for an order to terminate the tenancy and evict the Tenants because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on January 16, 2023. The Landlords and the Tenants attended the hearing.

### **Determinations:**

#### **L2 APPLICATION**

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for the claim for compensation in the application. Therefore, the application is granted.
2. The Tenants agreed that they failed to pay utility costs that they were required to pay under the terms of the tenancy agreement.

3. The parties agreed that the total utility costs are \$635.30 as a result of the Tenant's failure to pay. An order for this amount shall issue.

## L1 APPLICATION

4. The Landlords 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.
5. As of the hearing date, the Tenants were still in possession of the rental unit.
6. The lawful rent is \$3,300.00. It is due on the 1st day of each month.
7. Based on the Monthly rent, the daily rent/compensation is \$108.49. This amount is calculated as follows:  $\$3,300.00 \times 12$ , divided by 365 days.
8. The Tenants have not made any payments since the application was filed.
9. The parties agree that the rent arrears owing to January 31, 2023 are \$33,000.00.
10. The Landlords incurred costs of \$186.00 for filing the two applications and is entitled to reimbursement of those costs.
11. The Landlords collected a rent deposit of \$3,300.00 from the Tenants 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.
12. Interest on the rent deposit, in the amount of \$53.39 is owing to the Tenants for the period from November 17, 2021 to January 16, 2023.
13. 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 Landlords attempted to negotiate a repayment agreement with the Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
14. At the hearing the Tenants submitted that they would like to stay in the unit. However, they did not have secure employment and submitted that they had no funds to pay the Landlord back the arrears that they owe. Living in the rental unit with the Tenants are their 5 children ages 8-19.
15. The Landlords submitted that the significant amount of arrears are negatively impacting the Landlords and their finances. They are paying to support their own living accommodations as well as the rental unit and have depleted a personal line of credit, they are also delinquent on their property taxes.
16. In weighing the parties' circumstances, I find the termination date to be reasonable. The Tenants have been afforded some additional time from the date of the hearing and the

issuance of this order. The Tenants will also receive an inevitable delay due to the delay in the enforcement of this order, no additional time will be granted.

**It is ordered that:**

**L2 APPLICATION**

1. The Tenants shall pay to the Landlords \$635.30, which represents the reasonable out-of-pocket expenses the Landlords have incurred as a result of the unpaid utility costs.
2. If the Tenants do not pay the Landlords the full amount owing on or before April 16, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 17, 2023, at 6.00% annually on the balance outstanding.

**L1 APPLICATION**

3. The tenancy between the Landlords and the Tenants is terminated unless the Tenants void this order.
4. **The Tenants may void this order and continue the tenancy by paying to the Landlords or to the LTB in trust:**
  - \$43,086.00 if the payment is made on or before April 16, 2023. See Schedule 1 for the calculation of the amount owing. This amount exceeds the monetary jurisdiction of the Board. This is an amount that the Tenants can choose to pay if they choose not to vacate the rental unit. The Board is not ordering this amount to be paid. This amount is optional and only required if the Tenants elect to remain in the rental unit.
5. 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 April 16, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
6. **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 April 16, 2023**
7. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$28,268.45. 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 owes on the rent deposit are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
8. The Tenants shall also pay the Landlords compensation of \$108.49 per day for the use of the unit starting January 17, 2023 until the date the Tenants move out of the unit.

9. If the Tenant does not pay the Landlords the full amount owing on or before April 16, 2023, the Tenants will start to owe interest. This will be simple interest calculated from April 17, 2023 at 6.00% annually on the balance outstanding.
10. The Landlords or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
11. If the unit is not vacated on or before April 16, 2023, then starting April 17, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
12. 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 17, 2023.

**April 5, 2023**

**Date Issued**

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Curtis Begg

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 October 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.

\*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 Tenants 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 30, 2023	\$42,900.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlords since the application was filed	- \$0.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlords owe the Tenants for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenants are entitled to	- \$0.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$35,000 (Board Monetary Jurisdiction)</b>

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

Rent Owing To Hearing Date	\$31,435.84
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlords since the application was filed	- \$0.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$3,300.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$53.39
<b>Less</b> the amount the Landlords owe the Tenants for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenants are entitled to	- \$0.00
<b>Total amount owing to the Landlords</b>	<b>\$28,268.45</b>
Plus daily compensation owing for each day of occupation starting January 17, 2023	\$108.49 (per day)