



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Chan v Brown, 2023 ONLTB 29493

**Date:** 2023-04-04

**File Number:** LTB-L-034034-22

**In the matter of:** 266 ANGUS GLEN BLVD  
MARKHAM ON L6C0P5

**Between:** Chi Hang Chan Landlord

**And**

Matthew Joshua Brown and Melanie Marguerite Beattie Tenants

Chi Hang Chan (the 'Landlord') applied for an order to terminate the tenancy and evict Matthew Joshua Brown and Melanie Marguerite Beattie (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on January 31, 2023.

Only the Landlord's Legal Representative Robertson Boyle and the Landlord's Agent Sherman Leung attended the hearing.

As of 2:23 p.m., the Tenants were not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

**Determinations:**

1. The Landlord obtained an *ex parte* order from the Board dated January 12, 2023 on an L3 application (LTB-L-065412-22-RV) which terminated the tenancy effective February 1, 2023.
2. As of the hearing date, the Tenants were still in possession of the rental unit, although the Landlord testified that they had informed him by email the morning of the hearing that they intended to vacate the unit before February 1, 2023. While tenancy has already been lawfully terminated as a result of the *ex parte* eviction order issued on January 12, 2023, it may be possible for the Tenants to bring a motion to set aside that order or otherwise challenge that order. Therefore, I will consider the application before me which seeks termination of the tenancy on different grounds. However, if the Tenants have vacated the rental unit prior to the date this order has been issued as a result of the *ex parte* order, the Tenants will only owe arrears up to the date they vacate.
3. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment 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

4. The lawful rent is \$5,500.00. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$180.82. This amount is calculated as follows: \$5,500.00 x 12, divided by 365 days.
6. The Tenants have not made any payments since the application was filed.
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 \$5,500.00 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.

Monetary jurisdiction

9. Section 207(1) of the Act provides that the Board cannot order a person to pay more than \$35,000.00.
10. The rent arrears owing to January 31, 2023 are \$53,000.00, which is in excess of the Board's monetary jurisdiction of \$35,000.00.
11. The Landlord's Legal Representative indicated a desire to proceed with the hearing of the application and was made aware that by proceeding with this application the Landlord's claim for rent arrears in excess of \$35,000.00 will be extinguished pursuant to section 207(3) of the Act.
12. This order terminates the tenancy and requires the Tenants to pay the rent arrears outstanding plus the cost of filing the application, and less the rent deposit being held by the Landlord. This amount, which the Tenants are being ordered to pay in accordance with subsection 74(3) of the Act, is subject to the Board's monetary jurisdiction of \$35,000.00.
13. The order also provides that the Tenants can choose to void the order in accordance with subsection 74(4) of the Act by paying the following amounts before the order is enforceable:
  - (a) the amount of rent that is in arrears under the tenancy agreement;
  - (b) the amount of additional rent that would have been due under the tenancy agreement as at the date of payment by the tenant had notice of termination not been given;
  - (c) the amount of NSF cheque charges charged by financial institutions to the landlord in respect of cheques tendered to the landlord by or on behalf of the tenant, as allowed by the Board in an application by the landlord under section 87;
  - (d) the amount of administration charges payable by the tenant for the NSF cheques, as allowed by the Board in an application by the landlord under section 87; and

(e) the costs ordered by the Board

14. The amount the Tenant must pay to void the order is over \$35,000.00. As the Tenants are not legally required to pay the amount necessary to void the order, I find that the monetary jurisdiction contained in section 207(1) of the Act does not apply to this portion of the order.

Relief from eviction

15. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

16. The Landlord testified that from the beginning of the tenancy the Tenants failed to pay all of the rent as it became due and then ceased paying rent altogether in May 2022. Although the Tenants signed an N11 notice to vacate, they did not do so, and the Landlord filed an L3 application as discussed above

**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:**
  - \$69,686.00 if the payment is made on or before April 5, 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 April 5, 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 April 5, 2023.**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$35,000.00.\*\* 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 \$180.82 per day for the use of the unit starting February 1, 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 5, 2023, the Tenants will start to owe interest. This will be simple interest calculated from April 6, 2023 at 6.00% annually on the balance outstanding.

8. If the unit is not vacated on or before April 5, 2023, then starting April 6, 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 April 6, 2023.

**April 4, 2023**  
**Date Issued**

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Margo den Haan  
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 6, 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 5, 2023**

Rent Owing To April 30, 2023	\$69,500.00
Application Filing Fee	\$186.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$69,686.00</b>

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

Rent Owing To Hearing Date	\$53,000.00
Application Filing Fee	\$186.00
<b>Less</b> the amount of the last month's rent deposit	- \$5,500.00
<b>Total amount owing to the Landlord (reduced because of the Board's monetary jurisdiction)</b>	<b>\$35,000.00**</b>
Plus daily compensation owing for each day of occupation starting February 1, 2023	\$180.82 (per day)