



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

**Citation:** Skyline Living v Di giuseppe, 2023 ONLTB 27125

**Date:** 2023-03-30

**File Number:** LTB-L-051267-22

**In the matter of:** 512, 269 FINCH DR  
SARNIA ON N7S5A2

**Between:** Skyline Living Landlord

**And**

Cody Di Giuseppe and Narissa Geauvreau Tenant

Skyline Living (the 'Landlord') applied for an order to terminate the tenancy and evict Cody Di Giuseppe and Narissa Geauvreau (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 14, 2023. The Landlord's agent, Jannica De la Paz, and Tenant Narissa Geauvreau attended the hearing. The Tenant spoke with Duty Counsel prior to the commencement of the hearing.

### **Preliminary Issue:**

1. After the Landlord's presentation of evidence, the Tenant requested an adjournment on the grounds that she received short notice of the hearing. According to the Tenant, she received the Notice of Hearing a week ago.
2. The Tenant's request was denied for the following reasons.
3. The Board's records indicate that the Notice of Hearing was mailed to the Tenants on February 21, 2023. As per the Board's Rule 3.9, the Notice of Hearing is deemed served the fifth day after mailing. In this case, the Notice of Hearing is deemed served on February 26, 2023.

4. In my view, the Tenants had sufficient time to prepare for today's hearing. The Tenant was unable to explain what she needed additional time for other than to say that she was directed by Duty Counsel to request an adjournment. The Tenant acknowledged that they were aware they owed the Landlord rent and that the Landlord had served them with a Notice of Termination for non-payment of rent. I am not satisfied that there is any prejudice to the Tenants in relation to the service of the Notice of Hearing. Accordingly, the request was denied.

**Determinations:**

1. The Landlord 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.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$1,367.35. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$44.95. This amount is calculated as follows: \$1,367.35 x 12, divided by 365 days.
5. The Tenants have paid \$2,150.00 to the Landlord since the application was filed.
6. The rent arrears owing to March 31, 2023 are \$8,656.15.
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 \$1,366.22 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.
9. Interest on the rent deposit, in the amount of \$33.22 is owing to the Tenants for the period from March 25, 2022 to March 14, 2023.
10. 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.
11. The Tenant testified that issues with paying the rent began when her fiancé (Tenant Cody) lost his job around the summer of 2022. She stated that the household income throughout most of 2022 consisted of Child Tax Benefits ('CTB') of approximately \$1,416.00 a month and her employment income of approximately \$700.00 bi-weekly. She indicated that Tenant Cody recently started a job for which he earns approximately \$700.00 bi-weekly.
12. The Tenant requested the Board exercise its discretion in this matter by allowing them to remain in the rental unit. The Tenants live in the rental unit along with their two young

children. She indicated that they could afford to pay \$550.00 a month towards the arrears on top of the monthly rent.

13. I am not convinced this is a viable tenancy. This is a young tenancy that began April 2022. Almost immediately the Tenants fell into arrears. The Tenants' circumstances today are relatively identical to their circumstances in 2022, with the exception that Tenant Cody is now working. I do not believe Tenant Cody's employment income is enough to make a difference given they were unable or unwilling to pay the monthly rent throughout most of 2022.
14. The Tenant indicated that she would reach out to social services and community organizations for assistance on her arrears. The issue here is that the arrears are substantial. These are steps that the Tenants could and should have taken prior to the hearing.
15. Based on the evidence before me, I am not satisfied that the Tenants would be able to make any meaningful arrears payments or the monthly rent in full and on time. Given this, I believe it would be prejudicial to the Landlord to grant the Tenants relief from eviction.

**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:**
  - \$8,842.15 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$10,209.50 if the payment is made on or before April 10, 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 10, 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 10, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$6,704.66. 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 \$44.95 per day for the use of the unit starting March 15, 2023 until the date the Tenant moves out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before April 10, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 11, 2023 at 5.00% annually on the balance outstanding.
8. The Landlord or the Tenants 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 April 10, 2023, then starting April 11, 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 April 11, 2023.

**March 30, 2023**

**Date Issued**

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Dawn Sullivan

Vice Chair, 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 11, 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 March 31, 2023**

Rent Owing To March 31, 2023	\$10,806.15
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$2,150.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes 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>\$8,842.15</b>

**B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before April 10, 2023**

Rent Owing To April 30, 2023	\$12,173.50
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$2,150.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes 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>\$10,209.50</b>

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

Rent Owing To Hearing Date	\$10,068.10
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$2,150.00
<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	- \$1,366.22
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$33.22

<b>Less</b> the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenants is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$6,704.66</b>
Plus daily compensation owing for each day of occupation starting March 15, 2023	\$44.95 (per day)