



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

**Citation:** Starlight Blackstar Opco Ltd. v Mortimer, 2023 ONLTB 28038

**Date:** 2023-03-28

**File Number:** LTB-L-041533-22

**In the matter of:** C14-3015 Queen Street East Scarborough,  
ON M1N 1A5

**Between:** Starlight Blackstar Opco Ltd. Landlord

**And**

Stacey Mortimer Tenant

Starlight Blackstar Opco Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Stacey Mortimer (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 27, 2023.

The Landlord's Legal Representative Matt Anderson and the Tenant attended the hearing. The Tenant met with Tenant Duty Counsel prior to the hearing.

### **Determinations:**

#### *Adjournment Request*

1. The Tenant requested an adjournment of the matter in order to prepare for the hearing, as the Tenant submitted she had just received the Notice of Hearing on February 15, 2023 and submitted that the Board's rules required a minimum of 15 days notice for a hearing.
2. Having reviewed Rules 5.3 – 5.10, I note that there is no limitation period with respect to notice with respect L1 applications.
3. Further, in light of the amount of the arrears and the fact that the Tenant prepare herself subsequent to having received the N4 the adjournment request was denied.
4. 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.

5. As of the hearing date, the Tenant was still in possession of the rental unit.
6. The lawful rent is \$2,374.66. It is due on the 1st day of each month.
7. Based on the Monthly rent, the daily rent/compensation is \$78.07. This amount is calculated as follows: \$2,374.66 x 12, divided by 365 days.
8. The Tenant has not made any payments since the application was filed.
9. The rent arrears owing to February 28, 2023 are \*\$35,000.00. The Landlord has agreed to acquiesce to the Board's monetary jurisdiction as outlined under s. 207 of the *Residential Tenancies Act, 2006* (the 'Act').
10. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. The Landlord collected a rent deposit of \$2,311.48 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.
12. Interest on the rent deposit, in the amount of \$15.97 is owing to the Tenant for the period from January 1, 2021 to February 27, 2023.

### Section 83 Considerations

13. The Tenant acknowledged the arrears and testified that in March of 2020 her business had shut down completely.
14. The Tenant testified that she had to make choices between paying rent and dealing with various family health issues, as well as her own issues and is asked for additional time to vacate the unit. The Tenant testified that she would be out of the unit by April 15, 2023. That said, in light of the amount of the arrears and due to the date of this order the eviction will be postponed until April 8, 2023.
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 not be unfair to postpone the eviction until April 8, 2023 pursuant to subsection 83(1)(b) of the Act.

### It is ordered that:

16. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
17. **The Tenant may void this order and continue the tenancy by paying to the Landlord:**
  1. \$84,515.39 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

2. \$86,890.05 if the payment is made on or before April 8, 2023. See Schedule 1 for the calculation of the amount owing.
18. 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 8, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
19. **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 8, 2023.**
20. If the Tenant does not void the order, the Tenant 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 Tenant. See Schedule 1 for the calculation of the amount owing.
21. The Tenant shall also pay the Landlord compensation of \$78.07 per day for the use of the unit starting February 28, 2023 until the date the Tenant moves out of the unit.
22. If the Tenant does not pay the Landlord the full amount owing on or before April 8, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 9, 2023 at 5.00% annually on the balance outstanding.
23. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
24. If the unit is not vacated on or before April 8, 2023, then starting April 9, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
25. 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 9, 2023.

**March 28, 2023**

**Date Issued**

\_\_\_\_\_  
Jagger Benham

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 9, 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.

\* - The Board's jurisdiction is \$35,000.00 in accordance with s. 207(1) of the Act.

**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 March 31, 2023**

Rent Owing To March 31, 2023	\$84,329.39
Application Filing Fee	\$186.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$84,515.39</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before April 8, 2023**

Rent Owing To April 30, 2023	\$86,704.05
Application Filing Fee	\$186.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$86,890.05</b>

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

Rent Owing To Hearing Date	\$81,687.96
Application Filing Fee	\$186.00
<b>Less</b> the amount of the last month's rent deposit	- \$2,311.48
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$15.97
<b>Total amount owing to the Landlord</b>	<b>*\$35,000.00</b>
Plus daily compensation owing for each day of occupation starting February 28, 2023	\$78.07 (per day)