



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Robert Wilcox v Caster, 2023 ONLTB 27313

**Date:** 2023-03-28

**File Number:** LTB-L-043983-22

**In the matter of:** 2, 729 LAKESHORE RD E  
MISSISSAUGA ON L5G1J7

**Between:** Estate of Robert Wilcox Landlord

**And**

Samantha Caster Tenant

Estate of Robert Wilcox (the 'Landlord') applied for an order to terminate the tenancy and evict Samantha Caster (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 2, 2023. This application was heard by videoconference on March 2, 2023. The Landlord's legal agent, S. Wilcox, the Landlord's legal representative, E. Page, and the Tenant attended the hearing. The Tenant had an opportunity to speak with Tenant Duty Counsel before the hearing.

### **Preliminary Issue:**

1. The Tenant was seeking an adjournment to retain counsel and to file evidence regarding her circumstances of why she did not pay rent and to raise issues regarding maintenance. The Tenant states that she was only aware of the hearing as of February 24, 2023, 6 days before the hearing and thought that she could only speak with counsel 7 days before the hearing. I find this unlikely as the Notice of Hearing clearly states that if the Tenant wishes to speak with TDC they should do so prior to the hearing.
2. I note that section 10 of the *Statutory Powers Procedure Act* allows parties to be represented by a representative at the hearing. As set out in the LTB Interpretation Guidelines, the right to representation is not absolute and does not automatically guarantee an adjournment. The evidence before me is the Tenant did not make any efforts to retain counsel before the hearing. The arrears in this matter are substantial and I find that the prejudice to the Landlord in granting the adjournment outweighs the prejudice to the Tenant in proceeding. The Tenant was informed that she had the opportunity to make

submissions on the reasons she did not pay rent. Regarding the issues of maintenance, the Tenant did not make any efforts to serve or file evidence regarding the maintenance issue since she received the notice of hearing and therefore, I do not find that an adjournment should be granted for this purpose.

**Determinations:**

3. 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.
4. As of the hearing date, the Tenant was still in possession of the rental unit.
5. The lawful rent is \$400.00 per week.
6. Based on the Weekly rent, the daily rent/compensation is \$56.99. This amount is calculated as follows: \$400.00 x 52, divided by 365 days.
7. The Tenant has paid \$5,300.00 to the Landlord since the application was filed.
8. The rent arrears owing to March 3, 2023 is \$9,400.00.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. The Landlord collected a rent deposit of \$1,600.00 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.
11. 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 Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would not be unfair to postpone the eviction until April 28, 2023 pursuant to subsection 83(1)(b) of the Act.
12. Pursuant to section 83(6), I am required to consider whether the Landlord made attempts to negotiate a payment agreement with the Tenant. The Landlord's legal representative submitted that a letter was sent to the Tenant on August 6, 2022 regarding a repayment plan. However, the parties did not reach an agreement. I am satisfied that the Landlord attempted to negotiate a payment agreement with the Tenant.
13. With respect to section 83(2), the Tenant testified that the reason she did not pay rent was that she was not working and was only in receipt of EI. She is now employed and able to enter a repayment plan where she would pay \$250.00 in addition to rent every Friday of the month. The Landlord objected to the repayment plan.

14. In consideration of the foregoing, I find it would not be unfair to postpone termination of the tenancy. The Tenant's proposed payment plan should not be imposed on the Landlord, as it would take 39 weeks to pay off the outstanding arrears. However, the postponed termination date should provide the Tenant with an opportunity to organize her move or obtain the funds needed to void the order.

**It is ordered that:**

1. The tenancy between the Landlord 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 Landlord or to the LTB in trust:**
  - \$10,086.00 if the payment is made on or before April 28, 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 28, 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 28, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$8,327.94. 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.
6. The Tenant shall also pay the Landlord compensation of \$56.99 per day for the use of the unit starting March 3, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before April 28, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 29, 2023 at 5.00% annually on the balance outstanding.
8. The Landlord or the Tenant 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 28, 2023, then starting April 29, 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 29, 2023.

**March 28, 2023**

**Date Issued**

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**Camille Tancioco**

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 29, 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before April 28, 2023**

Rent Owing To May 26, 2023	\$15,200.00
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	- \$5,300.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$10,086.00</b>

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

Rent Owing To Hearing Date	\$15,041.94
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	- \$5,300.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,600.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$8,327.94</b>
Plus daily compensation owing for each day of occupation starting March 3, 2023	\$56.99 (per day)