



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

Citation: Laptev v Gervais, 2023 ONLTB 24098

Date: 2023-03-28

File Number: LTB-L-043410-22

In the matter of: Whole House, 1243 LILLIAN AVE
WINDSOR ON N8X4A2

Between: Kamen Laptev Landlord

And

John Gervais, Johnathan Geauvreau and Theresa Gervais Tenant

Kamen Laptev (the 'Landlord') applied for an order to terminate the tenancy and evict John Gervais, Johnathan Geauvreau and Theresa Gervais (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 1, 2023.

The Landlord and the Tenant attended the hearing.

Determinations:

1. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,973.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$64.87. This amount is calculated as follows: \$1,973.00 x 12, divided by 365 days.
5. The Tenant has paid \$2,675.00 to the Landlord since the application was filed.

6. The rent arrears owing to March 31, 2023 are \$13,790.00.
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 \$1,950.00 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.
9. Interest on the rent deposit, in the amount of \$72.28 is owing to the Tenant for the period from March 1, 2021 to March 1, 2023.
10. The Tenant, Theresa Gervais, did not dispute the rent arrears but submitted that she had financial difficulties since she was laid off often from her employment at Flex & Gates, a car parts manufacturing company, where she earns between \$500.00 to \$600.00 weekly. She explained that her husband, John Gervais, receives monthly ODSP benefits between \$700.00 to \$1200.00 weekly, calculated based on her income.
11. The Tenant claims she has three children, 20, 19, and 16. The Tenant claims that the 20-year-old is a customer service representative at Princess Auto and purchases weekly groceries for \$200.00, and the 19-year-old works part-time at Fresco and contributes \$50.00 weekly towards household expenses.
12. The Tenant testified that her brother, Johnathan Gauvreau(JG), has moved back into the rental unit as of January 05, 2023, after moving out in August 2022. The Tenant claims that JG, an employed Drywall specialist at four-leaf homes, contributes \$150.00 weekly. The Tenant claims she cannot afford the \$350.00 payments toward the rent arrears proposed by the Landlord, as their household expenses are over \$900.00.
13. The Landlord expressed doubt about the Tenant's ability to pay rent arrears because it is significant, and she should have contacted him for any payment plans before the hearing. The Landlord asserts that any monthly payment plan seems unrealistic and may put the Tenant in further financial distress. The Landlord sought a standard eviction order.
14. 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 28, 2023 pursuant to subsection 83(1)(b) of the Act.
15. On balance, given the passage of time since the Landlord filed this application with the Board and the Tenant's reluctance to contact the Landlord to discuss any payment plans before the hearing, postponing the eviction beyond April 28, 2023, pursuant to subsection 83(1)(b), will be prejudicial to the Landlord.

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:**
- \$13,976.00 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$15,949.00 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 \$10,045.59. 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 \$64.87 per day for the use of the unit starting March 2, 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 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.
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

Percy Laryea
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.

**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	\$16,465.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,675.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$13,976.00

B. 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 April 30, 2023	\$18,438.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,675.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$15,949.00

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

Rent Owing To Hearing Date	\$14,556.87
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,675.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,950.00

Less the amount of the interest on the last month's rent deposit	- \$72.28
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$10,045.59
Plus daily compensation owing for each day of occupation starting March 2, 2023	\$64.87 (per day)