



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

**Citation:** Bernada Properties v Evans, 2023 ONLTB 27700

**Date:** 2023-03-27

**File Number:** LTB-L-047661-22

**In the matter of:** 1412, 50 STEPHANIE ST  
TORONTO ON M5T1B3

**Between:** Bernada Properties Landlord

### **And**

Louise C. Evans Tenant

Bernada Properties (the 'Landlord') applied for an order to terminate the tenancy and evict and Louise C. Evans (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 15, 2023.

The Landlord's Legal Representative M. Zarnett, the Tenant and the former tenant Joseph Watling attended the hearing.

### **Determinations:**

#### *Preliminary Issue: Is Joseph Watling a Tenant?*

1. At the start of the hearing Joseph Watling who is named as a Tenant in the application stated that he vacated the unit on or around August 31, 2020. He said he verbally informed the superintendent at the building that he is vacating and never thought he would need this in writing. The Tenant Louise Evans testified also testified that Joseph Watling had not resided at the unit after August 2020.
2. The Landlord's Legal Representative submitted that the Tenant had no proof that he did not live there, and no written notice was given to the Landlord. He cited another Board member's case TNL-31097-21 wherein the member found that possession was more than physical possession of a rental unit. This particular case does not apply to this situation since in this case Joseph Watling had no connection with the rental unit after he vacated in

August 2020. He and the Tenant Louise Evans are estranged, and he has been renting somewhere else since he moved out and does not have any possession of the rental unit.

3. I find that Joseph Watling has not been a tenant in possession of the unit since August 31, 2020. As Joseph Watling vacated before September 1, 2021, the Board does not have the jurisdiction to make a rent arrears order against him. when the amendment was made to include former Tenants under the jurisdiction of the Board.
4. Under s.87(1)(b) of the *Residential Tenancies Act, 2006* ("Act") the Board may make an order against a former tenants if they vacated the rental unit on or after September 1, 2021. Hence Joseph Watling is being removed as a party to this application.

*L1 Application: Rent arrears*

5. 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.
6. As of the hearing date, the Tenant was still in possession of the rental unit.
7. The lawful rent is \$1,898.40. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$62.41. This amount is calculated as follows: \$1,898.40 x 12, divided by 365 days.
9. The Tenant has not made any payments since the application was filed.
10. The rent arrears owing to March 31, 2023 are \$20,512.00.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$1,874.33 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.
13. Interest on the rent deposit, in the amount of \$17.07 is owing to the Tenant for the period from January 1, 2022 to March 15, 2023.

*Section 83 considerations*

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 30, 2023 pursuant to subsection 83(1)(b) of the Act.
15. The Tenant testified that she was laid off from her job of 13 years in October 2020 and since then she is struggling with keeping a job and has not lasted more than a few months.

She also had a shoulder injury and was on EI for 5 months from March 2022. Due to all these job changes her EI ran out and she is currently sustaining on Ontario Works.

16. She further added that she has been living at the rental unit since 2006 and she will need sometime to find a place where she can fit her belongings from this two bedroom apartment.
17. The Landlord's Legal Representative submitted that the Board not delay the termination beyond April 15, 2023.
18. I accept that any delay in enforcement will cause some prejudice to the Landlord given the high rent arrears and the fact the Tenant is unable to pay the arrears. However, the Tenant has lived at the rental unit for more than 17 years so granting a brief delay would not be unfair in the circumstances. The Landlord holds a last month's rent deposit so granting the Tenant an additional month will not add to the arrears. I am willing to grant the Tenant until April 30, 2023 to find another suitable accommodation.

**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:**
  - \$20,698.00 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$22,596.40 if the payment is made on or before April 30, 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 30, 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 30, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$17,844.35. 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 \$62.41 per day for the use of the unit starting March 16, 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 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 1, 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. If the unit is not vacated on or before April 30, 2023, then starting May 1, 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 May 1, 2023.

**March 27, 2023**

**Date Issued**

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Sheena Brar

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 November 1, 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	\$20,512.00
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	- \$0.00
<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>\$20,698.00</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 30, 2023**

Rent Owing To April 30, 2023	\$22,410.40
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	- \$0.00
<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>\$22,596.40</b>

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

Rent Owing To Hearing Date	\$19,549.75
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	- \$0.00
<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	- \$1,874.33
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$17.07

<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>\$17,844.35</b>
Plus daily compensation owing for each day of occupation starting March 16, 2023	\$62.41 (per day)