



**Order under Section 78(6)
Residential Tenancies Act, 2006**

Citation: Q Res V Operating LP v Nesbitt, 2023 ONLTB 27128

Date: 2023-03-21

File Number: LTB-L-001003-23

In the matter of: 621, 385 VINE ST
ST CATHARINES ON L2M6W4

Between: Q Res V Operating LP Landlord

And

Allan Nesbitt, Christopher Nesbitt and Janet Nesbitt Tenant

Q Res V Operating LP (the 'Landlord') applied for an order to terminate the tenancy and evict Allan Nesbitt, Christopher Nesbitt and Janet Nesbitt (the 'Tenant') and for an order to have the Tenant pay the rent they owe because the Tenant did not meet a condition specified in the order issued by the LTB on October 12, 2022 with respect to application LTB-L-016635-22.

This application was decided without a hearing being held.

Determinations:

1. The order provides that the Landlord can apply to the LTB under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenant to terminate the tenancy and evict the Tenant if the Tenant does not meet certain condition(s) in the order. This application was filed within 30 days of the breach.
2. I find that the Tenant has not met the following condition specified in the order:

The Tenant did not pay the lawful rent for January 2023 in full on or before January 1, 2023.

3. The previous application includes a request for an order for the payment of arrears of rent and the order requires the Tenant to make payments by specific due dates. Accordingly, in addition to eviction, the Landlord is entitled to request an order for the payment of arrears owing.
4. The Tenant was required to pay \$7,756.00 for rent arrears, and the application filing fee in the previous order. The amount that is still owing from that order is \$6,950.50 and that amount is included in this order. This order replaces order LTB-L-016635-22.
5. Since the date of the previous order, the Tenant has failed to pay the full rent that became owing for the period from October 1, 2022 to January 31, 2023.
6. The Landlord collected a rent deposit of \$1,642.86 from the Tenant and this deposit is still being held by the Landlord.
7. Interest on the rent deposit is owing to the Tenant for the period from December 01, 2022 to March 21, 2023.
8. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenant is required to pay.
9. The Landlord is entitled to daily compensation from the day after this order is issued to the date the Tenant moves out of the unit at a daily rate of \$54.07. This amount is calculated as follows: \$1,644.50 x 12, divided by 365 days.

It is ordered that:

1. Order LTB-L-016635-22 is cancelled.
2. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before April 01, 2023.
3. If the unit is not vacated on or before April 01, 2023, then starting April 02, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. 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 02, 2023.
5. The Tenant shall pay to the Landlord \$8,660.09* (Less any payments made by the Tenants after this application was filed on January 5, 2023). This amount represents the rent owing up to March 21, 2023, and the cost of filing the previous application, less the rent deposit and interest the Landlord owes on the rent deposit.
6. The Tenant shall also pay to the Landlord \$54.07 per day for compensation for the use of the unit starting March 22, 2023 to 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 01, 2023, the Tenant will start to owe interest. This will be a simple interest calculated from April 2, 2023 at 5.00% annually on the balance outstanding.

March 21, 2023

Date Issued

Lynn Mitchell

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

The Tenant has until March 31, 2023 to file a motion with the LTB to set aside the order under s. 78(9) of the Act. If the tenant files the motion by March 31, 2023 the order will be stayed and the LTB will schedule a hearing.

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 02, 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.

* Refer to the attached Summary of Calculations.

Summary of Calculation

Amount the Tenant must pay the Landlord:

Reason for amount owing	Period	Amount
Amount owing from previous order	Up to September 30, 2022	\$6,950.50
New Arrears	October 1, 2022 to March 21, 2023	\$3,363.47
Less the rent deposit:		-\$1,642.86
Less the interest owing on the rent deposit	December 01, 2022 to March 21, 2023	-\$11.02
Plus daily compensation owing for each day of occupation starting March 22, 2023		\$54.07 (per day)
Total the Tenant must pay the Landlord:		\$8,660.09 +\$54.07 per day starting March 22, 2023

2023 ONLTB 27128 (CanLII)