



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Paudel v Webb, 2023 ONLTB 22017

**Date:** 2023-03-01

**File Number:** LTB-L-026875-22

**In the matter of:** BASEMENT, 55 KIMBARK  
BRAMPTON ON L6X 2A3

**Between:** Binod Paudel Landlord

**And**

Walter Webb Tenant

Binod Paudel (the 'Landlord') applied for an order to terminate the tenancy and evict Walter Webb (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 16, 2023 at 3:30 p.m.

The Landlord Binod Paudel and the Tenant Walter Webb 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 \$1,600.00. It is due on the 1<sup>st</sup> day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$52.60. This amount is calculated as follows: \$1,600.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to January 31, 2023 are \$22,400.00.
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 \$3,200.00 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.

## Relief from Eviction

9. The Tenant alleged that there have been ongoing maintenance problems with the unit and invited me to consider these actions to justify mandatory refusal of eviction under subsection 83(3)(a) of the Act, when “the landlord is in serious breach of the landlord’s responsibilities under this Act or of any material covenant in the tenancy agreement.”
10. The events alleged by the Tenant include flooding in the unit leading to mold, issues with the furnace not that it did not work but being unable to control the temperature and issues related to the shared garbage receptacle being full.
11. The Tenant submitted several pictures of the flooding into evidence claiming water leaks on the floor regularly and sometimes daily beginning in June 2021. These pictures showed small to medium puddles of water.
12. It is undisputed that the Landlord hired a plumber in June 2021 who came to fix the issue. However, the Tenant claimed it only resolved the flooding issues temporarily and that these problems resurfaced in January 2022 following a winter storm where the hallway flooded.
13. Subsection 83(3)(a) of the Act speaks in the present tense, thus I cannot consider past breaches that have been remedied. Although the Tenant claims the problems are ongoing, the evidence before me suggests that the Landlord had addressed the flooding at one point mitigating the severity of the issue. The use of the word “serious” in subsection 83(3)(a) establishes that not all breaches of the Landlord’s responsibilities can be considered; only those determined by the Member to be serious will invoke section 83(3) of the Act. Even if all of these issues were ongoing, I am not satisfied based on the Tenant’s evidence or description of them that the matters, alone or in the aggregate, constitute a serious breach of any responsibilities of the Landlord under the Act.
14. The Tenant expressed that it would be a hardship to find a new affordable unit due to his limited income and due to health conditions related to high blood pressure and requested additional time to complete a housing search, up to 60 days. I accept that finding a new rental unit will be challenging for the Tenant.
15. 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 30, 2023 pursuant to subsection 83(1)(b) of the Act.

**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:**

- \$25,786.90 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$27,386.00 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 \$18,485.00. 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.
  6. The Tenant shall also pay the Landlord compensation of \$52.60 per day for the use of the unit starting April 30, 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.
  9. 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.
  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 May 1, 2023.

**March 1, 2023**  
**Date Issued**

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Greg Witt  
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 30, 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	\$25,600.00
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>\$25,786.90</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	\$27,200.00
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	- \$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>\$27,386.00</b>

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

Rent Owing To Hearing Date	\$21,611.00
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 of the last month's rent deposit	- \$3,200.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$112.00
<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>\$18,485.00</b>
Plus daily compensation owing for each day of occupation starting January 17, 2023	\$52.60 (per day)