



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

**Citation:** Javadicharani v Forbes, 2023 ONLTB 21989

**Date:** 2023-02-27

**File Number:** LTB-L-038441-22

**In the matter of:** 241 SEPTONNE AVE  
NEWMARKET ON L3Y2W5

**Between:** Morteza Javadicharani Landlords  
Yeganeh Khaniani

**And**

Katrina Elizabeth Forbes Tenants  
Tracey Marie Mensink (aka Tracy Marie  
Mensink)

Morteza Javadicharani and Yeganeh Khaniani (the 'Landlords') applied for an order to terminate the tenancy and evict Katrina Elizabeth Forbes and Tracey Marie Mensink (aka Tracy Marie Mensink) (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on February 14, 2023.

The first-named Landlord, the Landlord's Representative, Katy Sanaye, and the first-named Tenant attended the hearing.

**Determinations:**

1. The Landlords served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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 Tenants were still in possession of the rental unit.
3. The lawful rent is \$2,890.00. It is due on the 10th day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$95.01. This amount is calculated as follows: \$2,890.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to March 9, 2023 are \$40,460.00.
7. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

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8. The Landlords collected a rent deposit of \$2,890.00 from the Tenants and this deposit is still being held by the Landlords. 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 \$60.41 is owing to the Tenants for the period from October 8, 2021 to February 14, 2023.
10. The Landlords' claim in this application exceeds the Board's jurisdictional limit as set out in s.207(1) of the *Residential Tenancies Act*, 2006 (the 'Act') of \$35,000.00, that being the limit of the Small Claims Court. The Landlords acceded to the jurisdiction of the Board and waived any claim above this limitation.
11. The Tenant, Katrina Forbes (KF), testified that she is currently on social assistance and could only afford to pay approximately \$100/month above rent towards arrears. I find that the duration of such a payment plan would be highly prejudicial to the Landlords, and therefore shall not be considered.
12. KF stated that she has four children (ages from 2 to 13) and stated that this would affect her ability to find new accommodations.
13. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act. Given KF's uncontested evidence that young children are present, I find that it would not be unfair to postpone the eviction until March 31, 2023, pursuant to subsection 83(1)(b) of the Act.

**It is ordered that:**

1. The tenancy between the Landlords and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlords or to the LTB in trust:**
  - \$40,646.00 if the payment is made on or before March 9, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$43,536.00 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after March 31, 2023, but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before March 31, 2023**
5. If the Tenants does not void the order, the Tenants shall pay to the Landlords **\$35,186.00**. This amount includes rent arrears owing up to the date of the hearing minus the rent deposit and interest the Landlords owe to the Tenants. This amount exceeds the jurisdictional limit of the Board pursuant to section 207(1) of the Act, therefore the

maximum amount that can be awarded to the Landlords is \$35,000.00 plus the filing fee of \$186.00 for a total owing of \$35,186.00. See Schedule 1 for the calculation of the amount owing.

6. If the Tenants do not pay the Landlords the full amount owing on or before March 31, 2023, the Tenants will start to owe interest. This will be simple interest calculated from April 1, 2023 at 5.00% annually on the balance outstanding.
7. The Landlords or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
8. If the unit is not vacated on or before March 31, 2023, then starting April 1, 2023, the Landlords 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 April 1, 2023.

**February 27, 2023**

**Date Issued**

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Robert Brown

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 September 11, 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before March 9, 2023**

Rent Owing To March 9, 2023	\$40,460.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlords since the application was filed	- \$0.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$40,646.00</b>

**B. Amount the Tenants 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 April 9, 2023	\$43,350.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlords since the application was filed	- \$0.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$43,536.00</b>

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

Rent Owing To Hearing Date	\$38,045.05
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlords since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$2,890.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$60.41
<b>Total amount owing to the Landlords</b> <small>(being the Board's jurisdictional limit under s. 207(1) of the <i>Residential Tenancies Act</i>, 2006)</small>	<b>\$35,186.00</b>