



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

Citation: O'Shanter Development Company Ltd v Abellar, 2023 ONLTB 21682

Date: 2023-02-22

File Number: LTB-L-029516-22

In the matter of: 406, 660 BRIAR HILL AVE TORONTO
ON M6B4B7

Between: O'Shanter Development Company Ltd Landlord

And

Juliza Abellar Tenant

O'Shanter Development Company Ltd (the 'Landlord') applied for an order to terminate the tenancy and evict Juliza Abellar (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 18, 2023.

Only the Landlord's legal representative, Eric Ferguson attended the hearing.

As of 2:26 p.m. the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice).
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The monthly rent changed as a result of the Landlord's application to vary the percentage of the rent reduction issued by the City of Toronto dated September 9, 2019. The Board issued an order TNL-28642-20 dated August 25, 2022 regarding the reduction which was varied from 0.62% to 0.44% effective December 31, 2019.

4. The monthly rent for June to September 2022 was \$1,536.95, the rent for October to December 2022 was \$1,539.54. The retroactive rent owing based on order TNL-28642-20 is \$30.87.
5. The lawful rent is \$1,578.01 as of January 1, 2023. It is due on the 1st day of each month.
6. Based on the monthly rent, the daily rent/compensation is \$51.88. This amount is calculated as follows: \$1,578.01 x 12, divided by 365 days.
7. The Tenant has paid \$18,194.85 to the Landlord since the application was filed.
8. The rent arrears owing to January 31, 2023 are \$329.20.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. The Landlord collected a rent deposit of \$1,395.10 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.
11. Interest on the rent deposit, in the amount of \$1.72 is owing to the Tenant for the period from January 1, 2023 to January 18, 2023.
12. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
13. The Landlord requested a standard order with a voiding date of February 28, 2023.

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:**
 - \$2,093.21 if the payment is made on or before February 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 February 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 February 28, 2023.**

5. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the arrears of rent, compensation and the cost of filing the application the Landlord is entitled to by \$\$1,525.79. See Schedule 1 for the calculation of the amount owing. However, the Landlord is authorized to deduct from the amount owing to the Tenant \$51.88 per day for compensation for the use of the unit starting January 19, 2023 until the date the Tenant moves out of the unit.
6. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
7. If the unit is not vacated on or before February 28, 2023, then starting March 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. 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 March 1, 2023.

February 22, 2023
Date Issued

Debbie Mosaheb
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 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 February 28, 2023

Rent Owing To February 28, 2023	\$20,102.06
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$18,194.85
Total the Tenant must pay to continue the tenancy	\$2,093.21

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

Rent Owing To Hearing Date	\$17,879.88
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$18,194.85
Less the amount of the last month's rent deposit	- \$1,395.10
Less the amount of the interest on the last month's rent deposit	- \$1.72
Total amount owing to the Landlord	\$(1,525.79)
Plus daily compensation owing for each day of occupation starting January 19, 2023	\$51.88 (per day)