



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Starlight Canadian Residential Growth Fund v Eshaq Eshaq, 2023 ONLTB 21805

**Date:** 2023-02-22

**File Number:** LTB-L-039325-22

**In the matter of:** 111, 2602 SYCAMORE DR  
WINDSOR ON N8T2Y9

**Between:** Starlight Canadian Residential Growth Fund Landlord

**And**

Diana Aledon Nadu Nadu Tenants  
Hani Zaya Eshaq Eshaq

Starlight Canadian Residential Growth Fund (the 'Landlord') applied for an order to terminate the tenancy and evict Diana Aledon Nadu Nadu and Hani Zaya Eshaq Eshaq (the 'Tenant') because the Tenants did not pay the rent that the Tenants owe. The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on February 15, 2023. The Landlord's legal representative, Sharon Harris, and the Tenants attended the hearing. Nahi Hatoum provided Arabic translation for the Tenants.

### Determinations:

1. The Landlord 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 \$1,365.18. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$44.88. This amount is calculated as follows:  $\$1,365.18 \times 12$ , divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to February 28, 2023 are \$12,286.62.
7. The Landlord is entitled to \$40.00 to reimburse the Landlord for administration charges and \$10.00 for bank fees the Landlord incurred as a result of 2 cheques given by or on behalf of the Tenants which were returned NSF.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

9. The Landlord collected a rent deposit of \$1,352.74 from the Tenants 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.
10. Interest on the rent deposit, in the amount of \$20.49 is owing to the Tenants for the period from January 1, 2021 to February 15, 2023.

### **Section 83 considerations**

11. 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 March 31, 2023 pursuant to subsection 83(1)(b) of the Act.
12. The Tenants requested the Board exercise its discretion in this case by allowing them to remain in possession of the rental unit.
13. Tenant Hani Zaya Eshaq Eshaq ('Eshaq') explained that the reason they were unable to pay the rent or the arrears was because he had no employment income due to an accident for a short period of time. He further explained that both of their parents were ill last year and they had to send money overseas to care for them. Tenant Eshaq stated that they are now working more hours and no longer send money to family back home.
14. Tenant Eshaq testified that both he and his wife have been employed as vegetable packers for over a year. He indicated that they are now working more hours. According to Tenant Eshaq, they work between 7 to 11 hours a day, 6 days a week at a rate of \$15.50 an hour. The Tenants also receive Child Tax Benefits ('CTB') of \$1,130.00 a month.
15. The Tenants proposed paying the arrears within six months. For the reasons that follow, I am not satisfied the Tenants would be able to pay the arrears in addition to the monthly rent in full and on time. I say this for the following reasons.
16. This tenancy began in December 2020. It was the evidence of the Landlord that the Tenants have had a running balance on their account for some time even before the N4 Notice was served on June 9, 2022. At the time the application was filed with the Board on July 15, 2022, the Tenants had two months of unpaid rent. Since that time, the Tenants have made no payments to the Landlord towards ongoing rent or the arrears. The last payment the Tenants made to the Landlord was in May 2022.
17. While the Tenants claim they are working between 84 to 132 hours a week, they have not submitted any evidence to corroborate their employment status or income. Such evidence may have been helpful in assessing the reasonableness of their proposal to pay the arrears.
18. Despite the service of a notice of termination and letters encouraging repayment options, the Tenants have made no attempts to pay the rent or arrears. The Tenants have been in receipt of CTB benefits and employment income yet have prioritized sending money to family over the rent.

19. I am not satisfied that there is much change in the Tenants' current circumstances that would suggest that they would be able or willing to pay the lawful monthly rent in full and on time in addition to any meaningful payment towards the arrears, which are substantial. For these reasons, I am not convinced that this is a viable tenancy and believe it would be prejudicial to the Landlord to allow the Tenants to remain in the rental unit given their inability to pay the rent or arrears. I do, however, find it reasonable in the circumstances to delay the eviction until March 31, 2023 to allow the Tenants additional time to secure housing.

**It is ordered that:**

1. The tenancy between the Landlord 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 Landlord or to the LTB in trust:**
  - \$12,522.62 if the payment is made on or before February 28, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$13,887.80 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 do not void the order, the Tenants shall pay to the Landlord \$10,457.41. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$44.88 per day for the use of the unit starting February 16, 2023 until the date the Tenants moves out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before March 5, 2023, the Tenants will start to owe interest. This will be simple interest calculated from March 6, 2023 at 5.00% annually on the balance outstanding.
8. The Landlord or the Tenants 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 March 31, 2023, then starting April 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 April 1, 2023.

**February 22, 2023**  
**Date Issued**

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Dawn Sullivan  
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 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.

\*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 February 28, 2023**

Rent Owing To February 28, 2023	\$12,286.62
Application Filing Fee	\$186.00
NSF Charges	\$50.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenants is entitled to	- \$0.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$12,522.62</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 March 31, 2023	\$13,651.80
Application Filing Fee	\$186.00
NSF Charges	\$50.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenants 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 Tenants is entitled to	- \$0.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$13,887.80</b>

2023 ONL TB 21805 (CanLI)

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

Rent Owing To Hearing Date	\$11,594.64
Application Filing Fee	\$186.00
NSF Charges	\$50.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,352.74
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$20.49
<b>Less</b> the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenants are entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$10,457.41</b>
Plus daily compensation owing for each day of occupation starting February 16, 2023	\$44.88 (per day)