



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Di Donato v Sterne, 2023 ONLTB 21298

**Date:** 2023-02-21

**File Number:** LTB-L-033384-22

**In the matter of:** LOWER, 177 CHATHAM STREET  
BRANTFORD ON N3S4G6

**Between:** Benjamin Di Donato and Paolo Di Donato Landlord

**And**

Kim Sterne Tenant

Benjamin Di Donato and Paolo Di Donato (the 'Landlord') applied for an order to terminate the tenancy and evict Kim Sterne (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 31, 2023.

The Landlord's Legal Representative K. Shumir and the Tenant 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 \$1,700.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$55.89. This amount is calculated as follows: \$1,700.00 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 \$22,700.00.
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 \$1,700.00 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.

9. Interest on the rent deposit, in the amount of \$79.69 is owing to the Tenant for the period from July 28, 2019 to January 31, 2023.

*Relief From Eviction*

10. The Landlord seeks a standard 11 day order terminating the tenancy as the rent arrears are substantial, it is a small landlord who has been financially impacted by the lack of rent payments and the Tenant has made no payments of rent or payments towards the arrears since the application was filed.
11. The Tenant requested that her tenancy be preserved. She testified that she had shared the apartment with her brother and when he unexpectedly moved out of the rental unit, she was unable to pay the entire rent and the stress of the unexpected move caused her health issues. She testified that she was off work for "several months" and was "off and on" work since. She testified that she could stay in the unit and pay the rent and arrears if she had time to find a roommate. When asked why she hadn't tried to find a roommate since her brother vacated in October 2021, she stated she had thought about it but was afraid of the LTB process which could evict them both. She testified that she is currently off work and is ready to go back to work, she has no income and has not applied for social assistance benefits. She requested time to find a roommate and propose a payment plan for the arrears of rent.
12. 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 14, 2023 pursuant to subsection 83(1)(b) of the Act. Taking into account the Tenant's disclosed health issues and the substantial amount of the rent arrears and the fact that no rent payments have been made and the Tenant is not financially able to pay the rent as it falls due or the arrears, I find it would be unfair to allow further arrears to occur. As there is a last month's rent deposit on account, the termination will be postponed as no further arrears of rent will occur in the extended termination period.

**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:**
  - \$24,586.00 if the payment is made on or before February 28, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$26,286.00 if the payment is made on or before March 14, 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 March 14, 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 March 14, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$21,106.31. 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 \$55.89 per day for the use of the unit starting February 1, 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 March 4, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 5, 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 March 14, 2023, then starting March 15, 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 March 15, 2023.

**February 21, 2023**

**Date Issued**

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Nicola Mulima

Vice Chair, 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 15, 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	\$24,400.00
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>\$24,586.00</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before March 14, 2023**

Rent Owing To March 31, 2023	\$26,100.00
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>\$26,286.00</b>

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

Rent Owing To Hearing Date	\$22,700.00
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	- \$1,700.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$79.69
<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>\$21,106.31</b>
Plus daily compensation owing for each day of occupation starting February 1, 2023	\$55.89 (per day)