



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

Citation: 940412 Ontario Ltd. v Swearingen, 2023 ONLTB 20914

Date: 2023-02-16

File Number: LTB-L-026542-22

In the matter of: 103, 146 DOWLING AVE
TORONTO ON M6K3A7

Between: 940412 Ontario Ltd. Landlord

And

Mike Swearingen Tenant

2023 ONLTB 20914 (CanLII)

940412 Ontario Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Mike Swearingen (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 16, 2023.

Only the Landlord's legal representative, Sam Ursino attended the hearing.

As of 1:57 p.m. the Tenant was not present or represented at the hearing.

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 lawful rent is \$1,138.50. It is due on the 1st day of each month.
4. Based on the monthly rent, the daily rent/compensation is \$37.43. This amount is calculated as follows: \$1,138.50 x 12, divided by 365 days.
5. The Tenant has paid \$10,217.50 to the Landlord since the application was filed.
6. The rent arrears owing to January 31, 2023 are \$1,113.50.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.

9. 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.
10. The Landlord indicated that the Tenant has given the Landlord a Form N9 to terminate the tenancy as of February 28, 2023. As such, the Landlord requested a standard order with a voiding date of February 28, 2023.
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 February 28, 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:**
 - \$2,438.00 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. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$759.88. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$37.43 per day for the use of the unit starting January 17, 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 February 24, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 25, 2023 at 5.00% annually on the balance outstanding.
8. 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.

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 March 1, 2023.

February 16, 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	\$12,469.50
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$10,217.50
Total the Tenant must pay to continue the tenancy	\$2,438.00

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

Rent Owing To Hearing Date	\$10,791.38
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$10,217.50
Total amount owing to the Landlord	\$759.88
Plus daily compensation owing for each day of occupation starting January 17, 2023	\$37.43 (per day)