



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Agostino v Santos, 2023 ONLTB 20188

**Date:** 2023-02-16

**File Number:** LTB-L-036959-22

**In the matter of:** 2, 305 CATHARINE ST N  
HAMILTON ON L8L4S8

**Between:** Ellen Agostino Landlords  
Salvatore Agostino

**And**

Helder Santos Tenant

Ellen Agostino and Salvatore Agostino (the 'Landlords') applied for an order to terminate the tenancy and evict Helder Santos (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 1, 2023.

Only the Landlords attended the hearing.

As of 1:54 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 Landlords evidence.

### **Determinations:**

1. The Landlords 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 \$1,695.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$55.73. This amount is calculated as follows: \$1,695.00 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 February 28, 2023 are \$14,444.81.

7. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlords collected a rent deposit of \$1,695.00 from the Tenant 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 \$33.20 is owing to the Tenant for the period from April 22, 2022 to February 1, 2023.
10. As noted, the Tenant did not attend the hearing of this matter and thus I did not have the opportunity to hear their evidence regarding their circumstances. or to dispute the Landlords application for an eviction order.
11. The Landlords attempted negotiate the arrears with the Tenant with no response. I am satisfied the Landlord met their obligation to attempt to negotiate a repayment plan with the Tenant
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 Landlords 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.

**It is ordered that:**

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**
  - \$14,630.81 if the payment is made on or before February 27, 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 27, 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 27, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$11,263.34. 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 Landlords owe 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 \$55.73 per day for the use of the unit starting February 2, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlords the full amount owing on or before February 27, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 28, 2023 at 5.00% annually on the balance outstanding.
8. The Tenant shall pay to the Landlords any sum of money that is owed as a result of this order.
9. If the unit is not vacated on or before February 27, 2023, then starting February 28, 2023, the Landlords 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 Landlords on or after February 28, 2023.

**February 16, 2023**

**Date Issued**

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Camille Clyne

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 August 31, 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 27, 2023**

Rent Owing To February 28, 2023	\$14,444.81
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlords since the application was filed	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$14,630.81</b>

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

Rent Owing To Hearing Date	\$12,805.53
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlords since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,695.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$33.20
<b>Total amount owing to the Landlords</b>	<b>\$11,263.34</b>
Plus daily compensation owing for each day of occupation starting February 2, 2023	\$55.73 (per day)