



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

**Citation:** Tam v Sherwood, 2023 ONLTB 20194

**Date:** 2023-02-15

**File Number:** LTB-L-023957-22

**In the matter of:** 250, 2 SHAW STREET  
TORONTO ON M6K3N5

**Between:** Tracy Tam Landlord

**And**

Christopher Sherwood Tenants  
Katherine Lehto

Tracy Tam (the 'Landlord') applied for an order to terminate the tenancy and evict Christopher Sherwood and Katherine Lehto (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on February 7, 2023.

The Landlord and the Tenant, Christopher Sherwood, attended the hearing. The Tenant confirmed that he had the authority to speak on behalf of Katherine Lehto.

**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 Tenant was still in possession of the rental unit.
3. The lawful rent is \$2,688.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$88.37. This amount is calculated as follows: \$2,688.00 x 12, divided by 365 days.
5. The Tenant has paid \$22,500.00 to the Landlord since the application was filed.
6. The rent arrears owing to February 28, 2023 are \$7,074.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

### Landlord's evidence

8. The Landlord is seeking termination of the tenancy by way of an 11-day standard order. She stated that she provided the Tenants with lawful rent increases and the Tenants have refused to pay these increases. She testified that she gave the Tenants a decrease in the rent during the COVID-19 pandemic and has communicated with them verbally and in writing with respect to the expected lawful monthly rent. She stated that the rent is not paid on time and she must adjust her financial situation each month to meet her financial obligations. She further stated that she should not be punished because the Tenants cannot pay the rent and she would rather not continually be faced with the process of filing applications with the Board.

### Tenant's evidence

9. The Tenant stated they did not pay the rent in accordance with the notices of rent increase as they believed these increases were incorrect. He stated they now understand that it is their responsibility to pay the lawful monthly rent as indicated by the Landlord and acknowledged the lawful monthly rent is \$2,688.00 and will be increased to \$2,755.00 commencing March 1, 2023.
10. The Tenant stated they do not want to move out and requested the Board consider a payment plan to preserve the tenancy. They have lived in the rental unit since 2019 and have three children under the age of six. He stated trying to find a new place to live would prove difficult given the current rental market. The Tenants' proposed a payment plan of which they would pay \$381.00 per month for a period of twelve months in addition to the monthly rent. The Tenant stated his monthly income is sufficient to support a payment plan and the monthly rent.

### **Analysis**

11. While I understand the position of both parties and what they are seeking from the Board, the *Residential Tenancies Act, 2006* (the 'Act') is remedial legislation and the courts have determined that evicting a tenant is a remedy of last resort. In the cases of *Sutherland v. Lamontagne*, [2008] O.J. No. 5763 (Div. Ct.) and *Paderewski Society v. Ficyk*, [1998], the Divisional Court stated, "to put somebody out of their home must, in my view, call for clear and compelling circumstances that it's no longer possible for the arrangement to continue."
12. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act. In making this finding, I considered the amount of rent arrears owing and the Tenants' willingness to pay the debt they owe to the Landlord.
13. I have also considered the Tenants' proposed payment plan which I am satisfied is reasonable. This payment plan will see that the Landlord recoups the monies owed within twelve months. Further, if the Tenants do not comply with the terms of the payment plan, the Landlord can mitigate possible further prejudice by applying to the Board for an ex parte order of eviction under s.78 of the Act.

**It is ordered that:**

1. The Tenants shall pay to the Landlord \$7,260.00, which represents the arrears of rent (\$7,074.00) owing as of the date of the hearing, and costs (\$186.00) to the Landlord to file the application with the Board.
2. The Landlord's application for eviction of the Tenants is denied on the condition that:
  - (a) The Tenants shall make the following payments to the Landlord in respect to the monies owing under paragraph 1 of this order:

<b>Date Payment Due</b>	<b>Amount of Payment</b>
February 17, 2023	\$2,688.00 (February rent)
March 15, 2023	\$381.00 (arrears and costs)
April 15, 2023	\$381.00 (arrears)
May 15, 2023	\$381.00 (arrears)
June 15, 2023	\$381.00 (arrears)
July 15, 2023	\$381.00 (arrears)
August 15, 2023	\$381.00 (arrears)
September 15, 2023	\$381.00 (arrears)
October 15, 2023	\$381.00 (arrears)
November 15, 2023	\$381.00 (arrears)
December 15, 2023	\$381.00 (arrears)

January 15, 2024	\$381.00 (arrears)
February 15, 2024	\$381.00 (arrears)

**(b) The Tenants shall also pay the Landlord the lawful monthly rent for the months of March 2023 to February 2024 in full, and on the first of each corresponding month.**

3. If the Tenants fail to make any of the payments in accordance with paragraph 2, and by the dates required, then:
- (a) The Landlord may apply under section 78 of the Act, 2006 for an order terminating the tenancy and evicting the Tenants, and for the payment of any new arrears of rent and NSF charges not already ordered under paragraph 1 of this order. The Landlord must make the application within 30 days of a breach of a condition set out in paragraph 2 of this order.
  - (b) The balance owing under paragraph 1 of this order shall become payable on the day following the date of default. The monies owing shall bear interest at the post-judgment interest rate determined under subsection 207(7) of the Act.

**February 15, 2023**  
**Date Issued**

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Susan Priest  
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.