



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

**Citation:** New York Toning & Tanning (Can) Inc. v Yanch, 2023 ONLTB 18422

**Date:** 2023-02-10

**File Number:** LTB-L-023880-22

**In the matter of:** 149 PARK RD S  
OSHAWA ON L1J4H1

**Between:** New York Toning & Tanning Landlord  
(Can) Inc.

**And**

Jenny Fraser Tenants  
Steven Yanch

New York Toning & Tanning (Can) Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Jenny Fraser and Steven Yanch (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on January 4, 2023.

The Landlord's Agent, William Hodgins, and the Tenants attended the hearing. The Tenants spoke with Tenant Duty Counsel prior to the hearing. Catherine Debbert attended as a witness for the Landlord.

**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 \$1,659.68. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$54.56. This amount is calculated as follows: \$1,659.68 x 12, divided by 365 days.
5. The Tenants have paid \$4,019.75 to the Landlord since the application was filed.
6. The rent arrears owing to January 31, 2023 are \$15,870.33.

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 \$1,600.00 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.
9. Interest on the rent deposit, in the amount of \$36.71 is owing to the Tenants for the period from February 4, 2022 to January 4, 2023.

#### Section 83 considerations

10. The Landlord is seeking termination of the tenancy by way of a standard 11-day order. The Landlord's witness testified that she has attempted to have discussions on a monthly basis with the Tenants with respect to paying the monthly rent and the rent arrears on a with very few responses from the Tenants.
11. The Tenants do not dispute the amount of rent arrears owed to the Landlord but are seeking relief by way of a payment plan or, in the alternative, more time to vacate the rental unit. The Tenants suggested they would like to reach out to their local social agencies to assist them in paying the arrears and finding alternative housing.
12. The Tenant, Jenny Fraser, testified that she is not employed and receives only the Child Tax Benefit. They have a 10 year old son. The Tenant, Steven Yanch, added that he is employed and his monthly income is approximately \$1,500.00. The total monthly income is \$2,056.33.
13. The Tenants stated that they would be agreeable to a termination date of February 28, 2023 however the Landlord could not agree to this date.
14. Although the Tenants requested relief by way of a payment plan, the rent arrears are substantial and their monthly income does not support paying the monthly rent plus their other monthly expenses. On the strength of the evidence before me, I find that a payment plan is not in anyone's best interest, as it seems it would be setting the Tenants up for failure. The Tenants have paid practically no rent since May 2022 and it is not clear that they will have the capability to pay the rent on a go forward basis.
15. 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 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:**

- \$17,716.01 if the payment is made on or before February 28, 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 February 28, 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 February 28, 2023**
  5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$12,978.18. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
  6. The Tenants shall also pay the Landlord compensation of \$54.56 per day for the use of the unit starting January 5, 2023 until the date the Tenant moves out of the unit.
  7. If the Tenants do not pay the Landlord the full amount owing on or before February 28, 2023, the Tenants will start to owe interest. This will be simple interest calculated from March 1, 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 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.
  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 1, 2023.

**February 10, 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.

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.

\*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this order. The cheque will be in the amount directed plus any interest accrued up to the date of the order.

**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	\$21,549.76
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$4,019.75
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$17,716.01</b>

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

Rent Owing To Hearing Date	\$18,448.64
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$4,019.75
<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	- \$1,600.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$36.71
<b>Total amount owing to the Landlord</b>	<b>\$12,978.18</b>
Plus daily compensation owing for each day of occupation starting January 5, 2023	\$54.56 (per day)