



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

**Citation:** KENDALE (11) DIV. v Malayer, 2023 ONLTB 19065

**Date:** 2023-02-08

**File Number:** LTB-L-029057-22

**In the matter of:** 609, 11 KENDALE CRT  
HAMILTON ON L9C2T7

**Between:** KENDALE (11) DIV. Landlord

**And**

Sharam Ataei Malayer and Sogol Ataei Malayer Tenants

KENDALE (11) DIV. (the 'Landlord') applied for an order to terminate the tenancy and evict Sharam Ataei Malayer and Sogol Ataei Malayer (the 'Tenants') because the Tenants did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 18, 2023.

Only the Landlord's Legal Representative, Nidhi Sharma, attended the hearing.

As of 9:48 a.m., the Tenants were 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 Landlord's evidence.

**Determinations:**

1. The Landlord served the Tenants 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 \$1,654.81. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$54.40. This amount is calculated as follows: \$1,654.81 x 12, divided by 365 days.
5. The Tenants have paid \$14,371.38 to the Landlord since the application was filed.
6. The rent arrears owing to January 31, 2023 are \$521.97.
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 \$1,604.54 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 \$35.61 is owing to the Tenants for the period from March 1, 2022 to January 18, 2023.
10. 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. I accept the Landlord's Legal Representative's submission that the Tenants advised the Landlord prior to the hearing that the balance of arrears could be paid by January 30, 2023. ***If the Tenants have already paid to the Landlord the amount owing up to January 31, 2023, \$707.91, on or before January 31, 2023, then this order has already been voided and would not be enforceable.***

**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:**
  - \$2,362.72 if the payment is made on or before February 19, 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 Tenant has paid the full amount owing as ordered plus any additional rent that became due after February 19, 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 Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before February 19, 2023**
5. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the arrears of rent, compensation and the cost of filing the application the Landlord is entitled to by \$1,607.85. See Schedule 1 for the calculation of the amount owing. However, the Landlord is authorized to deduct from the amount owing to the Tenant \$54.40 per day for compensation for the use of the unit starting January 19, 2023 until the date the Tenants move out of the unit.
6. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
7. If the unit is not vacated on or before February 19, 2023, then starting February 20, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. 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 February 20, 2023.

**February 8, 2023**

**Date Issued**

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Diane Wade

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 20, 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 19, 2023**

Rent Owing To February 28, 2023	\$16,548.10
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	- \$14,371.38
<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>\$2,362.72</b>

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

Rent Owing To Hearing Date	\$14,217.68
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	- \$14,371.38
<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	- \$1,604.54
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$35.61
<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>\$(1,607.85)</b>
Plus daily compensation owing for each day of occupation starting January 19, 2023	\$54.40 (per day)

