



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Weston Co-Ownership Apartments Inc. v Shawdover, 2023 ONLTB 18820

**Date:** 2023-02-06

**File Number:** LTB-L-033580-22

**In the matter of:** 207, 2255 Weston Rd  
York ON M9N1Y5

**Between:** Weston Co-Ownership Apartments Inc. Landlord

**And**

Hervolist Shawdover Tenant

Weston Co-Ownership Apartments Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Hervolist Shawdover (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on January 31, 2023.

The Landlord and the Tenant attended the hearing. The Landlord was represented by Carrie Aylwin.

I note that at the beginning of the hearing, the Tenant was experiencing technical issues with his audio. However, after he joined the hearing by dialing in, in addition to the link to the videoconference, his audio issues subsided.

### Determinations:

#### PRELIMINARY REQUEST TO COMBINE APPLICATIONS

1. The Tenant initially sought to combine the Landlord's application with his T2 and T6 applications. He testified that he had no issue paying the rent but that he wanted his issues to be heard and considered.
2. The Landlord opposed the Tenant's request to combine stating that the arrears were significant in nature and that by combining the applications, it would result in a further delay and a further accrual of arrears.
3. The Tenant's request was denied as I did not find the issues to be interrelated – one application was about rent arrears and the other was about the Tenant's rights and maintenance issues – while the latter may have been a reason to explain the accrual of rent arrears, the Tenant could articulate their circumstances pursuant to section 83 of the

Act. Further, I do not find that by hearing them separately, there will be inconsistent findings or that the parties will face any prejudice.

4. I proceeded to hear the Landlord's L1 application.

### L1 APPLICATION

5. The Landlord 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.

#### Landlord's Evidence

6. As of the hearing date, the Tenant was still in possession of the rental unit.
7. The lawful rent is \$1,670.75. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$54.93. This amount is calculated as follows: \$1,670.75 x 12, divided by 365 days.
9. The Tenant has paid \$1,630.00 to the Landlord since the application was filed.
10. The rent arrears owing to January 31, 2023 are \$19,630.75.
11. The Landlord seeks a standard, voidable eleven-day order.

#### Tenant's Response

12. The Tenant did not dispute the arrears but indicated that he did not have his records with him at the hearing. He confirmed receiving disclosure from the Landlord's office.
13. The Tenant submits that there were 3-4 months of rent paid to the Landlord's agent in cash that were not reflected in the Landlord's records. There was no documentation submitted in support of this assertion.
14. The Tenant explained his tenancy began in December 2021 and that he stopped paying the rent because he was waiting to come to the Board on his issues. He testified that he lived alone and works.
15. The Tenant seeks to preserve his tenancy and proposes a repayment plan whereby he would be the rent and an additional \$1,000.00 towards the arrears for the next 20 months until the arrears are paid in full.
16. On cross-examination, the Tenant confirmed he paid rent once since he moved in and allocated the rest of the income to his expenses for his children. He also confirmed that he prioritized other expenses including unanticipated lawyer bills. The Tenant also confirmed that he was presently employed since August 2022.
17. In the alternative, the Tenant seeks 40 days to secure first and last month rent and make alternative accommodation arrangements.

### ANALYSIS

18. Based on the evidence before the Board, I find the arrears and costs owing to January 31, 2023 are \$19,841.75. While the Tenant believes that there are 3-4 months of rent payments that are missing, this does not align with his testimony that he only made one payment since this tenancy began. Further, the Tenant failed to submit documentary evidence such as bank statements or receipts in support of his assertion.
19. While the Tenant says he did not have his records with him, I find the Tenant was well-aware of the allegation of rent arrears and the period in which they accrued in advance of the hearing date and could have gathered evidence of discrepancies in advance of the hearing.
20. Without positive evidence, it is very difficult to establish a negative claim. Thus, in order for the Tenant's claim to be successful, he must provide some positive proof of the disputed payment, which, I find, he did not.
21. At paragraph 26 of *F. H. v. McDougall, 2008 SCC 53 (CanLII)*, the Court found that the civil standard of proof requires that evidence "must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test." Here I find the Tenant has failed to meet the required standard.
22. With respect to the Tenant's request for a repayment plan, I find that it is not realistic and affordable for the Tenant. I say this because the Tenant's testimony was his monthly rent was \$3,500.00 and his monthly expenses totalled \$3,170.75 which is inclusive of the monthly rent, groceries, transportation and credit card bills. Based on the income and expenses, this leaves them with approximately \$213.00 every month; as such, it is unclear how the Tenant will be able to make the additional monthly arrears payment.
23. Repayment plans are granted in order to allow a tenant to catch up on the arrears while continuing to pay their monthly rent. Here, based on the Tenant's own statements, a repayment plan would seem to be unrealistic and put the Tenant in further financial distress.
24. Therefore, I cannot grant the Tenant's request for a payment plan. I can however consider whether to postpone the eviction pursuant to subsection 83(1)(b) of the Act.
25. Given the length of this tenancy, the fact that the Tenant has only made one payment since the start of this tenancy, and the quantum of arrears outstanding, I do not find the circumstances warrant relief from eviction. I find it appropriate to grant a standard, voidable order allowing the Tenant to void the order and keep his tenancy should he make full payment of the arrears.
26. The Landlord is entitled to \$20.00 to reimburse the Landlord for administration charges and \$5.00 for bank fees the Landlord incurred as a result of 1 cheque given by or on behalf of the Tenant which was returned NSF.
27. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

28. The Landlord collected a rent deposit of \$1,630.00 from the Tenant 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.
29. Interest on the rent deposit, in the amount of \$26.48 is owing to the Tenant for the period from December 1, 2021 to January 31, 2023.
30. 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.

**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:**
  - \$21,512.50 if the payment is made on or before February 21, 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 21, 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 21, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$18,185.27. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. The rent deposit and interest the Landlord owes 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 \$54.93 per day for the use of the unit starting February 1, 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 21, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 22, 2023 at 5.00% annually on the balance outstanding.
8. The Landlord or the Tenant 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 21, 2023, then starting February 22, 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 February 22, 2023.

**February 10, 2023**

**Date Issued**

\_\_\_\_\_  
Sonia Anwar-Ali  
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 22, 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 17, 2023**

Rent Owing To February 28, 2023	\$22,931.50
Application Filing Fee	\$186.00
NSF Charges	\$25.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$1,630.00
<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>\$21,512.50</b>

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

Rent Owing To Hearing Date	\$21,260.75
Application Filing Fee	\$186.00
NSF Charges	\$25.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$1,630.00
<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	- \$1,630.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$26.48
<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>\$18,185.27</b>
Plus daily compensation owing for each day of occupation starting February 1, 2023	\$54.93 (per day)