



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

**Citation:** Malik v Gallant, 2023 ONLTB 17416

**Date:** 2023-02-01

**File Number:** LTB-L-028605-22

**In the matter of:** MAIN FLOOR, 1204 SIMCOE STREET  
SOUTH  
OSHAWA ON L1H4M2

**Between:** Muhammad W Malik Landlord

**And**

Cassandra Crocker and Justin Gallant Tenant

Muhammad W Malik (the 'Landlord') applied for an order to terminate the tenancy and evict Cassandra Crocker and Justin Gallant (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

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

The Landlord attended the hearing.

The first named Tenant, Cassandra Crocker attended the hearing.

The second named Tenant, a former Tenant on the application, Justin Gallant also attended the hearing.

**Determinations:**

PRELIMIARY ISSUE: TENANT NOT IN POSSESSION

1. A The application as filed on May 21, 2022 names both Cassandra Crocker (CC) and Justin Gallant (JG) as Tenants.
2. At the hearing JG made a request to the Board to be removed from the Landlord's application. JG testified he had made requests to the Landlord on sever occasions prior to the hearing to be removed from the lease.
3. JG testified he had vacated the rental unit on December 1, 2020.
4. CC testified in support of JG's testimony he vacated the rental unit on December 1, 2020.
5. The Landlord did not dispute JG vacated the rental unit on December 1, 2020.
6. On the date this application was filed, subsection 87(1)(b) of the Act permitted a landlord to apply for an order for the payment of arrears of rent if the tenant is in possession of the rental unit. The effect of this section is that if the tenant is not in possession of the rental unit on the date the application is filed, the Board does not have jurisdiction to issue an order requiring the tenant to pay the arrears of rent. This is consistent with the decision of the Ontario Court of Appeal in *1162994 Ontario Inc. v. Bakker et al.* ( 2004 CanLII 59995 (ON CA)), based on the previous, but identical legislation.
7. I find the Tenant Justin Gallant was not in possession of the rental unit when the Landlord's L1 application was filed with the Board, and the Board has no jurisdiction with respect to the arrears claimed in the Landlord's application. Therefore, Justin Gallant will be removed from the application and the order.
8. The Tenant Cassandra Crocker will remain on the order as she was the Tenant still in possession of the unit when the Landlord's application was filed.
9. 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.
10. As of the hearing date, the Tenant was still in possession of the rental unit.
11. The lawful rent is \$1,700.00. It is due on the 1st day of each month.
12. Based on the Monthly rent, the daily rent/compensation is \$55.89. This amount is calculated as follows: \$1,700.00 x 12, divided by 365 days.
13. The Tenant has paid \$4,780.00 to the Landlord since the application was filed.
14. The rent arrears owing to January 31, 2023 are \$12,320.00.

15. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
16. The Landlord collected a rent deposit of \$1,700.00 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.
17. Interest on the rent deposit, in the amount of \$54.52 is owing to the Tenant for the period from April 1, 2020 to January 18, 2023.
18. The Tenant disputed the arrears, but did not submit evidence to the Board for my consideration on the Tenant's claims
19. The Tenant submitted that she was able to pay \$300.00 in addition to her lawful rent to pay the arrears.
20. The Landlord declined the Tenant's repayment plan offer. The position of the Landlord is that he has incurred financial burden due to the Tenant's arrears. The Landlord has maximized his line of credit and requested a standard order for termination and arrears.

#### SECTION 83: CONSIDERATION FOR RELIEF

21. The Tenant declined to submit any financial information for my consideration of a repayment plan. The Tenant submitted that she would require 60 days to find suitable housing if the Landlord's request for eviction was granted.
22. Given the quantum of arrears, and the minimal payments the Tenant has made since the application was filed, the arrears are continuing to accrue and the Landlord has incurred more debt and had to maximize his line of credit to carry the mortgage due to the Tenant's arrears. I have weighed the Tenant's submissions in consideration to the prejudice to the Landlord on a long delay of eviction, therefore I am granting the Landlord his request for an order for eviction, however I find it reasonable, to grant the Tenant an extended period to find suitable housing.
23. 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.
24. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
25. This order contains all reasons for the determinations and order made. No further reasons will be issued.

**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:
  - \$14,206.00 if the payment is made on or before February 28, 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 28, 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 28, 2023
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$10,057.50. 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 Tenant. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$55.89 per day for the use of the unit starting January 19, 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 12, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 13, 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 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 1, 2023**

**Date Issued**

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Greg Brocanier

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 notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

**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 28, 2023**

Rent Owing To February 28, 2023	\$18,800.00
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	- \$4,780.00
<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>\$14,206.00</b>

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

Rent Owing To Hearing Date	\$16,406.02
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	- \$4,780.00
<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	- \$1,700.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$54.52
<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>\$10,057.50</b>
Plus daily compensation owing for each day of occupation starting January 19, 2023	\$55.89 (per day)

