



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

File Numbers: LTB-L-019080-22
and LTB-L-041124-22

In the matter of: 10 Seven Oaks St
Whitby ON L1R0H3

Between: Prathaben Kanagasingham Landlord

And

Anthony Ball and Christine Burley Tenants

Prathaben Kanagasingham (the 'Landlord') applied for an order to terminate the tenancy and evict Anthony Ball and Christine Burley (the 'Tenants') because:

- the Tenants did not pay the rent that the Tenants owe (L1 Application); and
- the Tenants have been persistently late in paying the Tenants' rent; (L2 Application).

The Landlord also claimed outstanding utility charges in the L2 application.

These L1 and L2 applications were heard by videoconference on January 24, 2023.

Only the Landlord and the Landlord's Legal Representative, Thirusenthuran Sivaptham, attended the hearing.

As of 9:20 am, 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.

The Landlord's Legal Representative and Landlord both indicated that separately, they had tried to contact the Tenants. The representative stated he called the Tenants 10 days before this hearing when he served disclosure on them (by email and mail), but the Tenants did not reply. The Landlord stated he called the Tenants about 2 weeks ago, leaving them both a voicemail and text message about this scheduled hearing.

As a result, the hearing proceeded with only the Landlord's evidence, starting at 9:20 am and ending at 9:45 am.

As a preliminary matter, the Landlord's Legal Representative confirmed that he submitted an amended L1 application on January 15, 2023, which essentially reduced the amount of arrears being claimed, which was to have the amount correctly corresponding with the underlying N4 notice. In my view, the amount of arrears was reduced/corrected in the amended application, so there was no real prejudice to the Tenants-- I consented to the amended L1 application.

Determinations:

L1 Application – Non-Payment of Rent

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 \$2,800.00. It is due on the 1st day of each month.
4. Based on the monthly rent, the daily rent/compensation is \$92.05. This amount is calculated as follows: \$2,800.00 x 12, divided by 365 days.
5. The Tenant have not made any payments in respect of rent since the L1 application was filed.
9. The rent arrears owing to January 31, 2023 are \$25,600.00.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. The Landlord collected a rent deposit of \$2,800.00 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.
15. Interest on the rent deposit, in the amount of \$44.60 is owing to the Tenant for the period from February 27, 2021 to January 24, 2023.

L2 Application – Persistent Late Payment of Rent

16. Before me, the Landlord requested the withdrawal of the L2 application and provided reasons relating to the form and content of the application. As the request to withdraw presented no prejudice to the Tenants, I consent to the request to withdraw.

Relief from Eviction

17. The Landlord explained the efforts made by him to contact the Tenants about the outstanding arrears. He submitted exhibit LL#1 (July 9/22 text messages) to show that the Tenants stated their position at that time that they were not going to make any substantial payments toward the arrears as they had to prepare themselves for a new place, if and when they were able to find one. I was satisfied that the Landlord met the requirements of subsection 83(6) of the *Residential Tenancies Act, 2006* (the 'Act').
18. Apart from this submission, the Landlord was asked to provide circumstances as they relate to the Tenants and to himself. Both the Landlord and Landlord's Legal

Representative made submissions. There were no circumstances the Landlord was aware of pertaining to the Tenants in respect of a possibility of denying or postponing a possible eviction. The Landlord spoke to his personal circumstances, describing the measures he has had to take to keep himself financially afloat.

19. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

L1 Application – Non-Payment of Rent

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:**
 - o **\$25,786.00** if the payment is made **on or before January 31, 2023**. See Schedule 1-part A for the calculation of the amount owing.
- OR**
- o **\$28,586.00** if the payment is made **on or before February 7, 2023**. See Schedule 1-part B 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 7, 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 7, 2023.**
 5. **If the Tenants do not** void the order, the Tenants owes the Landlord \$22,350.60. This amount includes rent arrears owing up to the date of the hearing plus the filing fee of \$186.00, but less the rent deposit and interest the Landlord owes on the rent deposit. See Schedule 1-part C for the calculation of the amount owing.
 6. The Tenants shall also pay the Landlord compensation of \$92.05 per day for the use of the unit starting January 25, 2023 until the date the Tenants move out of the unit.
 7. If the Tenants do not pay the Landlord the full amount owing on or before February 7, 2023, the Tenants will start to owe interest. This will be simple interest calculated from February 8, 2023 at 5.00% annually on the balance outstanding.
 9. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.

10. If the unit is not vacated on or before February 7, 2023 , then starting February 8, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
11. 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 8, 2023.

L2 Application – Persistent Late Payment of Rent

12. The L2 application is withdrawn, pursuant to the consent provided by the LTB under subsection 200(4) of the Act.

January 27, 2023
Date Issued

Alex Brkic
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 of the Tenant expires on August 8, 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 LTB 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 January 31, 2023

Rent Owing To January 31, 2023	\$ 25,600.00
Application Filing Fee	\$ 186.00
NSF Charges	\$ 0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$ 0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$ 0.00
Total the Tenant must pay to continue the tenancy	\$ 25,786.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made after January 31, 2023 but on or before February 7, 2023

Rent Owing To February 28, 2023	\$ 28,400.00
Application Filing Fee	\$ 186.00
NSF Charges	\$ 0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$ 0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$ 0.00
Total the Tenant must pay to continue the tenancy	\$ 28,586.00

C. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date (January 24, 2023) – calculated as follows: rent owing to Dec 31/2022, plus 24 days compensation in January 2023.	\$ 25,009.20
Application Filing Fee	\$ 186.00
NSF Charges	\$ 0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$ 0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$ 0.00
Less the amount of the last month's rent deposit	- \$ 2,800.00
Less the amount of the interest on the last month's rent deposit	- \$ 44.60
Total amount owing to the Landlord	\$ 22,350.60
Plus daily compensation owing for each day of occupation starting January 25, 2023:	\$ 92.05 (per day)

2023 CanLII 131058 (ON LTB)