



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Porter v Dankowski, 2023 ONLTB 14858

**Date:** 2023-01-18

**File Number:** LTB-L-025187-22

**In the matter of:** 1, 300 CATHARINE ST N  
HAMILTON ON L8L4S9

**Between:** Kimberley Porter Landlords  
Shawn Porter

**And**

Melanie Dankowski Tenant

Kimberley Porter and Shawn Porter (the 'Landlords') applied for an order to terminate the tenancy and evict Melanie Dankowski (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 5, 2023. The Landlords attended the hearing and were represented by Kimberly Holleran, Paralegal. The Tenant attended the hearing and was self-represented.

**Determinations:**

1. The Landlords 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,447.96. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$47.60. This amount is calculated as follows: \$1,447.96 x 12, divided by 365 days.
5. The Tenant has paid \$4,228.00 to the Landlord since the application was filed.
6. The rent arrears owing to January 31, 2023 are \$11,695.32.
7. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlords collected a rent deposit of \$1,400.00 from the Tenant and this deposit is still being held by the Landlords. 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 \$62.75 is owing to the Tenant for the period from August 1, 2019 to January 5, 2023.

**Relief from eviction:**

10. I have considered all of the disclosed circumstances in accordance with subsection 83(2) and (6) 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.
11. At the hearing, the Tenant testified that on or about July 2022 she was served with an N12 notice of termination by the Landlords with a termination date of October 31, 2022. The Tenant stated that she intended to dispute this notice and as such, withheld rent payments to the Landlords commencing August 1, 2022. When asked what happened to the withheld funds, the Tenant stated that she used the money to pay other debts and expenses.
12. The Tenant requested a repayment plan in which she would pay her monthly rent on time, plus an additional \$500.00 towards the arrears commencing February 2023.
13. In my view, I find it would be unfair to impose such a repayment plan on the Landlords. The evidence before the Board is clear that the Tenant deliberately withheld rent payments in retaliation to the Landlords serving her with an N12 notice. There was no evidence before the Board to suggest that the Tenant experienced unforeseen hardship or a change in her monthly income which would have affected her ability to pay the monthly rent.
14. The Landlords are a non-corporate entity who rely on the rental income to pay the mortgage and taxes on the rental property. As such, I find it would be unfair to impose a 24-month repayment plan for a Tenant who has deliberately withheld her rent payments in retaliation to a lawful notice of termination being served.
15. I am however mindful to the fact that there are three young children residing in the rental unit. As such, I find it would not be unfair to delay termination of tenancy to February 28, 2023 to allow the Tenant some additional time to secure alternate housing or to pay the arrears in full.

**It is ordered that:**

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**
  - \$11,881.32 if the payment is made on or before January 31, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

- \$13,329.28 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 Landlords \$9,208.61. 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 Landlords owe 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 Landlords compensation of \$47.60 per day for the use of the unit starting January 6, 2023 until the date the Tenant moves out of the unit.
  7. If the Tenant does not pay the Landlords the full amount owing on or before January 29, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 30, 2023 at 5.00% annually on the balance outstanding.
  8. 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.
  9. 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.

**January 18, 2023**  
**Date Issued**

\_\_\_\_\_  
 Fabio Quattrociocchi  
 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 January 31, 2023**

Rent Owing To January 31, 2023	\$15,923.32
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlords since the application was filed	- \$4,228.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlords owe 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>\$11,881.32</b>

**B. 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	\$17,371.28
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlords since the application was filed	- \$4,228.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlords owe 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>\$13,329.28</b>

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

Rent Owing To Hearing Date	\$14,713.36
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlords since the application was filed	- \$4,228.00
<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	- \$1,400.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$62.75
<b>Less</b> the amount the Landlords owe 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 Landlords</b>	<b>\$9,208.61</b>
Plus daily compensation owing for each day of occupation starting January 6, 2023	\$47.60 (per day)