



## Order under Section 69 Residential Tenancies Act, 2006

Citation: Vasquez v Jones, 2023 ONLTB 17453  
File Number: LTB-L-027234-22

**In the matter of:** 1549 CHURCH ST  
WINDSOR ON N8X1V4

**Between:** Rosa Vasquez Landlords  
Jose Martinez

**And**

Austin Jones and Tenants  
Alisha Pulford

Rosa Vasquez and Jose Martinez (the 'Landlords') applied for an order to terminate the tenancy and evict Austin Jones and Alisha Pulford (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on January 17, 2023.

The Landlord Jose Martinez (JM) and the Tenants attended the hearing. The Landlord's Legal Representative Y. Zhang was also present.

**Determinations:**

Preliminary Issues:

1. The Tenant Alisha Pulford said that her name was spelt wrong on the application as Pulfor Alisha whereas her name is Alisha Pulford. The Landlord JM did not object, so the application is amended to name the Tenant correctly as "Alisha Pulford".
2. The application also lists Jose Martinez as the Landlord whereas he testified that he does not own the property, so he is not the Landlord. He further added he is just an agent for the Landlord and takes care of all the Landlord's duties on her behalf. The Tenants objected to his removal because Mr. Martinez told them that he and his wife owned the rental unit.
3. As per the definition of a Landlord in the *Residential Tenancies Act, 2006* (the 'Act'): "landlord" includes,
  - (a) the owner of a rental unit or any other person who permits occupancy of a rental unit, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit,

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(b) the heirs, assigns, personal representatives and successors in title of a person referred to in clause (a), and

(c) a person, other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent; ("locateur")

4. As per this definition Jose Martinez does qualify to be a landlord. Hence, he will be a party to this application as a Landlord.

L1 Application for rent arrears:

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.
6. As of the hearing date, the Tenants were still in possession of the rental unit.
7. The lawful rent is \$1,800.00. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$59.18. This amount is calculated as follows: \$1,800.00 x 12, divided by 365 days.
9. The Tenants have not made any payments since the application was filed.
10. The rent arrears owing from March 1, 2022 to January 31, 2023 are \$19,800.00.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. There is no last month's rent deposit.
13. The Tenants testified that they paid a \$10,000.00 for the rent deposit when the tenancy began on January 1, 2022. There was no proof submitted for it but the Landlord's evidence package included a handwritten lease agreement signed on December 12, 2021 where the Tenants are supposed to pay \$2000 as advance on 17<sup>th</sup> and 24<sup>th</sup> of December 2021 and the rest in first week of January 2022. I accept the evidence of the Landlord JM that the deposit was applied to rent owing for January 2022 and February 2022. The Tenants have not made any other rent payments since they have moved into the rental unit.
14. The Tenants wanted to raise some issues at the hearing which would be considered under s.82 of *the Residential Tenancies Act, 2006* (the 'Act'), but they did not provide disclosure of the issues and their evidence at least seven days before the hearing as required by s.82(2) and Board Rule of Procedure 19.4. Therefore, I did not permit the Tenants to raise issues under s.82 but advised that they could bring their own application before the Board.

Relief from eviction

15. 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.

16. The Tenants did bring up that the only toilet in the house was not functioning since April 18, 2022. Alisha Pulford (AP) testified that she informed the Landlord about the same around the same day. The issue with the toilet is still ongoing even though the Tenants tried to fix it once in between. They have had to go to the nearest coffee shop or friend's house because of the issue.
17. The Landlord stated that he has been thrice to the rental unit with a plumber, but the tenants have not made themselves available even with proper notices served. The last instance of this was on January 4, 2023. Even though the Tenants claimed that the Landlord has been there for other purposes, he has never looked at the toilet whereas the Landlord states that he is not a professional plumber and anytime he has come with a plumber the Tenants have denied entry.
18. The other issue the Tenants raised was a non-working stove since April 2022 again. AP testified she told the Landlord about it whereas the Landlord denied hearing about it at all. She referred to a conversation in June 2022 when the Landlord came to the rental unit, but the Landlord testified, he does not remember it at all. On the other hand, the Landlord testified that he had visited the rental unit in or around October 2, 2022 when he saw the Tenants cooking on the stove. The Tenants also had guests over at their house and in the ensuing altercation the police were called.
19. The Tenants were looking for a rent abatement but since the s.82 issues were not disclosed in time and s.83(3) provides a single recourse of denying eviction if the issues raised are serious in nature. The Tenants request cannot be granted.
20. Based on the evidence of both sides, I do understand the problem the Tenants have faced with a non-working toilet, but the Landlords have made attempts to fix the same on their request. The Tenants denying entry or not being available makes them liable for the delay as well. Even though the delay is unreasonable but the onus of that does not lie on the Landlords alone. As for the stove, there were contradictory statements from both sides and the Landlord gave evidence with a date when he has seen the Tenants use the stove. The Tenants did not object to this piece of evidence. Hence, I will not be considering the stove for s.83(3) considerations.
21. The Tenants have made no attempt to pay any rent since the tenancy started except the initial deposit which has been used up since February of 2022. In almost a year the Tenants have made no attempts to pay anything, and they did not share any personal circumstances to show that they could not work or pay against the rent. Based on a balance of probabilities and considering both sides evidence before the Board, I shall not be granting relief from eviction.

**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:**

- \$21,786.00 if the payment is made on or before February 28, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$23,586.00 if the payment is made on or before March 15, 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 March 15, 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 March 15, 2023**
  5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$19,192.05. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
  6. The Tenant shall also pay the Landlord compensation of \$59.18 per day for the use of the unit starting January 18, 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 March 15, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 16, 2023 at 5.00% annually on the balance outstanding.
  8. If the unit is not vacated on or before March 15, 2023, then starting March 16, 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 16, 2023.

**February 21, 2023**

**Date Issued**

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Sheena Brar

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 15, 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 28, 2023**

Rent Owing To February 28, 2023	\$21,600.00
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	- \$0.00
<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>\$21,786.00</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before March 15, 2023**

Rent Owing To March 31, 2023	\$23,400.00
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	- \$0.00
<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>\$23,586.00</b>

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

Rent Owing To Hearing Date	\$19,006.05
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	- \$0.00
<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	- \$0.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord</b>	<b>\$19,192.05</b>
Plus daily compensation owing for each day of occupation starting January 18, 2023	\$59.18 (per day)