



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

**Citation:** Rakhmanov v Harvey, 2023 ONLTB 14652

**Date:** 2023-01-13

**File Number:** LTB-L-024590-22

**In the matter of:** 509, 1060 SHEPPARD AVE. W. TORONTO  
ON M3J0G7

**Between:** Arslan Rakhmanov Landlord

**And**

Kerry Ann Harvey Tenant

Arslan Rakhmanov (the 'Landlord') applied for an order to terminate the tenancy and evict Kerry Ann Harvey (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 4, 2023.

The Landlord's legal representative, Julia Toso, and the Landlord attended the hearing.

The Tenant attended the hearing.

**Determinations:**

1. 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.
2. The Tenant was in possession of the rental unit on the date the application was filed.

**PRELIMINARY ISSUE: TENANT STILL IN POSSESSION OF RENTAL UNIT**

3. At the hearing the Tenant testified she was no longer in possession of the rental unit, and said she moved out early December.

4. The Landlord disputed this, stating that it was witnessed that the Tenant was still accessing the unit up to the end of December 2022.
5. The Tenant restated her position saying that she moved most of her items out of the rental unit in early December 2022 but was still moving larger items out up to the end of December 2022.
6. The Tenant testified she left the keys in the rental unit and submitted a vacate date of December 31, 2022.
7. At the time of this hearing the Landlord was not able to confirm the Tenant's claim she vacated.
8. After both the Landlord and the Tenant made their submissions, the parties agreed to set the day the Tenant vacated the rental unit for December 31, 2022. Rent arrears are calculated up to the date the Tenant vacated the unit.
9. The lawful rent is \$1,900.00. It was due on the 1st day of each month.
10. The Tenant has not made any payments since the application was filed.
11. The rent arrears owing to December 31, 2022 are \$20,900.00.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
13. The Landlord collected a rent deposit of \$1,900.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
14. Interest on the rent deposit, in the amount of \$38.85 is owing to the Tenant for the period from April 19, 2021 to December 31, 2022.

#### LANDLORD'S REQUEST FOR EVICTION

15. After the parties agreed on the vacate date of December 31, 2022 the Landlord's legal representative made a request to include a sheriff's eviction clause in the order, stating they were unable to confirm the Tenant had moved out, and submitted they had knowledge of someone still accessing the unit.
16. The Tenant testified that she left the keys in the rental unit and if someone was accessing the unit, it was not her, and restated she was not in possession of the rental unit.
17. 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.
18. 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 as of December 31, 2022, the date the Tenant moved out of the rental unit
2. The Tenant shall pay to the Landlord \$19,147.15. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application.  
The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
3. If the Tenant does not pay the Landlord the full amount owing on or before January 24, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 25, 2023 at 5.00% annually on the balance outstanding.
4. If the unit is not vacated on or before January 1, 2023, then commencing January 2, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that eviction may be enforced. Upon receipt of this order, the Court Enforcement Officer (Sheriff) is directed to give vacant possession of the unit to the Landlord, on or after January 2, 2023.

**January 13, 2023 Date**  
**Issued**

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Greg Brocanier  
Member, Landlord and Tenant Board

15 Grosvenor St, 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.

\*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 as the tenancy is terminated**

Rent Owing To Move Out Date	\$20,900.00
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 of the last month's rent deposit	- \$1,900.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$38.85
<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>\$19,147.15</b>