



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Marsolais v Fleming, 2023 ONLTB 14129

**Date:** 2023-01-10

**File Number:** LTB-L-011532-22

**In the matter of:** 1, 248 MURRAY ST  
SUDBURY ON P3B2R5

**Between:** Melvin Marsolais Landlord

**And**

Brian Fleming and Rose Turecky Tenant

Melvin Marsolais (the 'Landlord') applied for an order to terminate the tenancy and evict Brian Fleming and Rose Turecky (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on August 31, 2022.

The Landlord, Landlord's representative Angie Gravelle and the Tenants 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. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,075.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$35.34. This amount is calculated as follows: \$1,075.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to August 31, 2022 are \$8,510.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$850.00 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.
9. Interest on the rent deposit, in the amount of \$8.50 is owing to the Tenant for the period from November 1, 2020 to August 31, 2022.

10. The Tenant disputed the arrears and testified that the arrears did not start from December 2021 but from February 2022 to August 2022 for \$6,280.00 because that was when his wife's purse was stolen at Food Basics when she was shopping. The Tenant testified that the Landlord rejected all his attempts to discuss a payment plan for the arrears.
11. The Landlord provided detailed oral evidence regarding their discussions with the Tenant regarding the arrears and how rent payments could be made. The Landlord testified that the Tenant had not made any payments since this application was filed on February 27, 2022 and the outstanding amount of \$8,510.00 are arrears from December 2021 to August 31, 2022.
12. The Landlord provided detailed text messages and email correspondence as evidence regarding his attempts to discuss the rent arrears and develop a payment plan with the Tenant. The evidence shows that the Landlord contacted the Tenant on January 01, 2022, January 15, 2022, February 06, 2022, February 10, 2022, February 11, 2022, February 28, 2022, March 01, 2022, and August 16, 2022, concerning the rent arrears and repayment plans.
13. On a balance of probabilities, I am satisfied that the Landlord correctly calculated the arrears of rent owed for the rental period of December 01, 2021 to August 31 2022. The Landlord provided clear, concise and detailed evidence, which included records of rent payments, which establishes the arrears of rent owed total \$8,510.00. I find the Tenants' evidence was vague and lacked details to establish their claim that the Landlord did not account for all the partial payments of rent they believe they made which would result in the Landlord's calculations of arrears of rent being incorrect. I would have expected the Tenants to be able to provide proof of additional payments, electronic or otherwise.
14. The Tenant also requested to raise a number of maintenance issues, including a wooden deck, living room window, inadequate kitchen and living room heat and cancelled internet services, pursuant to section 82 of the Residential Tenancies Act, 2006 (the 'Act'). AG objected to this request arguing that the Tenant did not notify the Landlord of his intention to raise these issues and that they did not know what the issues were or what relief the Tenant would be seeking.
15. Section 82 of the Act provides that at a rent arrears hearing the Board shall permit the Tenant to raise any issue that could be the subject of an application made by the tenant if the tenant provides the landlord and the Board with advance disclosure of the issue and the evidence in accordance with the Board's rules or provides an explanation satisfactory to the Board explaining why the tenant could not comply with the disclosure requirements.
16. Rule 19.4 of the Rules of Procedure of the Landlord and Tenant Board states:

“Unless the LTB directed or ordered otherwise, a tenant who intends to raise issues under sections 82(1) or 87(2) of the RTA during an application about rent arrears shall provide the other parties and the LTB the following at least 7 days before the scheduled CMH or hearing: 1. A written description of each issue the tenant intends to raise; and
17. The Tenant did not explain why he did not provide the Landlords with any details about the maintenance issues and eviction threats he intended to raise at the hearing other than that

he needed more time to do so. The evidence the Tenant wanted to rely upon was fairly extensive, and I do not find that the Landlords could have a fair hearing without knowing the case against them. Therefore, I cannot consider the Tenant's section 82 issues, but he may file his own application to have these concerns considered by the Board.

18. 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.

**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:**
  - \$14,071.00 if the payment is made on or before January 21, 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 January 21, 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 January 21, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$7,837.50. 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 \$35.34 per day for the use of the unit starting September 1, 2022 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 January 21, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 22, 2023 at 2.00% 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 January 21, 2023, then starting January 22, 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 January 22, 2023.

**January 10, 2023**  
**Date Issued**

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Percy Laryea  
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.

**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 21, 2023**

Rent Owing To January 31, 2023	\$13,885.00
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	- \$
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$14,071.00</b>

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

Rent Owing To Hearing Date	\$8,510.00
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	- \$850.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$8.50
<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	- \$
<b>Total amount owing to the Landlord</b>	<b>\$7,837.50</b>
Plus daily compensation owing for each day of occupation starting September 1, 2022	\$35.34 (per day)

