



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Cabrol v Forgie, 2023 ONLTB 14835

**Date:** 2023-01-09

**File Number:** LTB-L-025652-22

**In the matter of:** 705, 95 Lombard Street  
Toronto ON M5C2V3

**Between:** Néstor Edgardo Cabrol Landlord

**And**

Allen Forgie Tenants  
Liza Forgie

Néstor Edgardo Cabrol (the 'Landlord') applied for an order to terminate the tenancy and evict Allen Forgie and Liza Forgie (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on January 5, 2023. Only the Landlord's legal representative, Berkan Altun, attended the hearing. As of 3:33pm, neither of the Tenants were 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. As a result, the hearing proceeded with only the Landlord's evidence.

### 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 Tenants were still in possession of the rental unit.
3. The lawful rent is \$1,350.00. It is due on the 15th day of each month. According to the Landlord's application, the Tenant is afforded the ability to pay by transfer every 6 months.
4. Based on the Monthly rent, the daily rent/compensation is \$44.38. This amount is calculated as follows: \$1,350.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to January 14, 2023 are \$59,400.00.
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 \$1,350.00 from the Tenants 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 \$358.77 is owing to the Tenants for the period from March 9, 2007 to January 5, 2023.
10. **The Landlord's claim for the period ending January 14, 2023 exceeds the Board's monetary jurisdiction of \$35,000.00. The Landlord indicated a desire to proceed with the hearing of the application and voluntarily waived the portion of the claim that exceeds the Board's monetary jurisdiction.**
11. While the Board cannot order a person to pay more than \$35,000.00, I find that this does not prohibit the Board from including the amount in excess in order for the Tenants to void the order to continue the tenancy.
12. The Tenants have made no payments since the application was filed and they have not responded to the Landlords communications regarding a payment plan. The Tenants did not attend the hearing to make submissions regarding their circumstances to consider if any relief may be warranted.
13. I have considered all of the disclosed circumstances in accordance with subsection 83 of the *Residential Tenancies Act, 2006* (RTA), 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 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:**
  - \$59,586.00 if the payment is made on or before January 14, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$60,936.00 if the payment is made on or before January 20, 2023. See Schedule 1 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 January 20, 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 January 20, 2023**

5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$57,503.59. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$44.38 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 Tenants do not pay the Landlord the full amount owing on or before January 20, 2023, the Tenants will start to owe interest. This will be simple interest calculated from January 21, 2023 at 5.00% annually on the balance outstanding.
8. The Landlord or the Tenants 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 20, 2023, then starting January 21, 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 21, 2023.

**January 9, 2023**  
**Date Issued**

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Terri van Huisstede  
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 July 21, 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 14, 2023**

Rent Owing To January 14, 2023	\$59,400.00
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>Total the Tenant must pay to continue the tenancy</b>	<b>\$59,586.00</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before January 20, 2023**

Rent Owing To February 14, 2023	\$60,750.00
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>Total the Tenant must pay to continue the tenancy</b>	<b>\$60,936.00</b>

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

Rent Owing To Hearing Date	\$59,026.36
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	- \$1,350.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$358.77
<b>Total amount owing to the Landlord</b>	<b>\$57,503.59</b>
Plus daily compensation owing for each day of occupation starting January 6, 2023	\$44.38 (per day)