



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

Citation: HAVCARE INVESTMENTS INC. v Mugford, 2023 ONLTB 14680

Date: 2023-01-09

File Number: LTB-L-025222-22

In the matter of: 704, 500 DAWES ROAD
TORONTO ON M4B2G1

Between: HAVCARE INVESTMENTS INC. Landlord

And

Julie White Tenants
Richard Mugford

HAVCARE INVESTMENTS INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Julie White and Richard Mugford (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on January 5, 2023. The Landlord's agent, Carolyn Krebs, and the Tenant attended the hearing. The Tenant confirmed that they were appearing on behalf of both Tenants. The Tenant also spoke with Tenant Duty Counsel on the hearing date.

Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenants 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 as of January 1, 2023 is \$1,016.27. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$33.41. This amount is calculated as follows: \$1,016.27 x 12, divided by 365 days.
5. The Tenants have paid \$4,200.00 to the Landlord since the application was filed.

6. The rent arrears owing to January 31, 2023 are \$5,622.66.
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 \$1016.27 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. Since the Landlord applied the deposit interest to the last month's rent deposit when the rent increased on January 1, 2023, there is no further interest owing on the deposit up to the hearing date.
10. The Tenants have lived in the rental unit since 2017 and have been financially struggling because of reduced income. The Tenants have been making ongoing payments to the Landlord which covers about half of the ongoing rent from OW. The Tenant explained that she has applied for another program for native women and hopes to be able to make a lump sum payment of \$2,500.00 towards the arrears by January 31, 2023 and expects that this agency combined with her OW would be enough to cover the full rent plus \$100.00 towards the arrears each month starting February 1, 2023.
11. The Landlord was opposed to the payment plan because the Tenants still owes the Landlord more than \$10,000.00 from a previous order from the Board in 2021 in addition to the new current arrears balance of almost \$6,000.00. The current arrears have more than doubled since the Landlord filed the L1 application in May of 2022.
12. The parties had previously agreed to a payment plan and the Tenants faulted on the plan and the Landlord failed to file their application under section 78 within the 30 days required and therefore, the Landlord is left with the increasing debt from the unpaid rent. The Landlord testified that the Tenant had also previously promised that she was getting agency help to pay the arrears and then the plan never came to fruition so she has little, if any, faith that the Tenants will follow through with their promises for payments. The Landlord agreed to an extension of time, however, the Landlord would not agree to another payment plan based on historic shortfalls in payments from the Tenants and the lack of diligence from the Tenants to pay off the arrears.
13. While I acknowledge that the Tenant has been working diligently to make attempts to secure additional funding to preserve the Tenancy, the Tenant could not provide any supporting documentation regarding any agency promise to support the rent payments or any supporting documentation that any additional money would be forthcoming. In fact, the Tenant indicated that she has a meeting the following week to sign papers for additional funding, but the tenant failed to provide any correspondence or supporting documents to this affect.
14. The fact that the Landlord did not to pursue the previous rent arrears and an order for the breach does not persuade me in determining that a payment plan is not appropriate under the current circumstances. However, I lack the confidence that a payment plan under the current circumstances would be appropriate on the basis that the Tenants have not provided substantive evidence to support that they can pay the full ongoing rent plus an amount towards the arrears aside from her promise she will do so.

15. The Tenants have only been paying \$525.00 per month towards the rent up to January of 2023, and according to the evidence filed by the Landlord, the Tenants did not make any payment towards rent in November of 2022. The Tenants have had since February of 2022 when the N4 notice of termination was given to them to find alternative means to support the ongoing rent and to find support to pay off arrears and has only recently engaged with applying for any such support. Based on this pattern, I do not believe that the tenancy is sustainable, and a payment plan would be prejudicial to the Landlord.
16. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until February 5, 2023 pursuant to subsection 83(1)(b) 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:**
 - \$5,808.66 if the payment is made on or before January 31, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$6,824.93 if the payment is made on or before February 5, 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 February 5, 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 February 5, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$3,943.16. 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 \$33.41 per day for the use of the unit starting January 6, 2023, until the date the Tenants move out of the unit.
7. If the Tenants does not pay the Landlord the full amount owing on or before February 5, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 6, 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 February 5, 2023, then starting February 6, 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 February 6, 2023.

January 9, 2023

Date Issued

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 August 6, 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	\$9,822.66
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,200.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Total the Tenant must pay to continue the tenancy	\$5,808.66

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 5, 2023

Rent Owing To February 28, 2023	\$10,838.93
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,200.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Total the Tenant must pay to continue the tenancy	\$6,824.93

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

Rent Owing To Hearing Date	\$8,973.43
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,200.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,016.27
Less the amount of the interest on the last month's rent deposit	- \$0.00
Total amount owing to the Landlord	\$3,943.16
Plus daily compensation owing for each day of occupation starting January 6, 2023	\$33.41 (per day)