



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Joshi v Bertrand, 2023 ONLTB 14057

**Date:** 2023-01-03

**File Number:** LTB-L-027664-22

**In the matter of:** 325 SUNNY MEADOW BLVD  
BRAMPTON ON L6R0E8

**Between:** Bakulesh Joshi Landlord

**And**

Marie-Eve Bertrand Tenant

Bakulesh Joshi (the 'Landlord') applied for an order to terminate the tenancy and evict Marie-Eve Bertrand (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 3, 2022.

The Landlord and the Tenant attended the hearing.

Only the Landlord and the Landlord's Legal Representative, K. Farrell attended the hearing.

As of 9:45 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. As a result, the hearing proceeded with only the Landlord's evidence.

### Determinations:

#### Preliminary issue

1. The Board received an email from the Tenant at approximately 8:00 a.m. on the morning of the hearing advising the Board that she will not be attending the hearing as she did not want to participate without a lawyer. The Board emailed the Tenant back advising her that she would need to attend the hearing to request an adjournment.
2. The Landlord's legal representative was opposed to the request as she was not sent any communication from the Tenant regarding rescheduling this hearing.
3. This communication was not received by the Landlord, it was only sent to the Board. As the Tenant was made aware to attend the hearing to request an adjournment, and failed to do so, I am not prepared to adjourn the matter absent more fulsome submissions from the Tenant explaining why it would be appropriate to do so in the circumstances.

#### L1 Application

4. 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.
5. As of the hearing date, the Tenant was still in possession of the rental unit.
6. The lawful rent is \$3,000.00. It is due on the 5th day of each month.
7. Based on the Monthly rent, the daily rent/compensation is \$98.63. This amount is calculated as follows: \$3,000.00 x 12, divided by 365 days.
8. The Tenant has not made any payments since the application was filed.
9. The rent arrears owing to November 4, 2022 are \$21,000.00.
10. The Landlord collected a rent deposit of \$3,000.00 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.

#### L2 Application

11. On May 25, 2022, the Landlord gave the Tenant an N5 notice of termination with a termination date of June 14, 2022. The notice contains the following allegations:
  - The Tenant has failed to pay the utilities bills in accordance with the tenancy agreement.
12. The Tenant failed to pay the utility bills within the seven days after receiving the N5 notice of termination, therefore the Tenant did not void the notice in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).
13. A copy of the tenancy agreement was submitted that shows the Tenant is responsible to pay for utilities.
14. The Landlord testified that he did not receive payment towards the utility bills from the tenant.
15. Based on the uncontested evidence before me, I find that the Tenant substantially interfered with a lawful right, interest or privilege of the Landlord by failing to pay the utility bills. Tenant did not void the notice in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).

#### Compensation for unpaid utilities

16. The Tenant failed to pay the hydro, water and gas costs that they were required to pay under the terms of the tenancy agreement.
17. The Landlord produced copies of the bills that the Tenant is responsible for.
18. The Landlord has incurred reasonable out-of-pocket expenses of \$2,172.93 as a result of the Tenant's failure to pay heat, electricity and water costs.

19. 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. The Tenant was not at the hearing to contest the Landlord's applications or to provide submissions regarding her circumstances.
20. As the Tenancy is terminated pursuant to the L2 application, section 74 of the Act does not apply, and there is not opportunity for the Tenant to void the arrears portion of the L1 application.

**It is ordered that:**

L1 Application

1. The tenancy between the Landlord and Tenant is terminated. The Tenant must move out of the rental unit on or before January 16, 2023.
2. The Tenant shall pay to the Landlord \$17,958.90, which represents the amount of rent owing up to November 3, 2022, less the rent deposit.
3. The Tenant shall also pay the Landlord compensation of \$98.63 per day for the use of the unit starting November 4, 2022 until the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlord the full amount owing on or before January 16, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 17, 2023 at 5.00% annually on the balance outstanding.

L2 Application

5. The tenancy between the Landlord and Tenant is terminated. The Tenant must move out of the rental unit on or before January 16, 2023.
6. The Tenant shall pay to the Landlord \$2,172.93, which represents the reasonable out of pocket expenses the Landlord has incurred as a result of unpaid utilities.
7. If the Tenant does not pay the Landlord the full amount owing on or before January 16, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 17, 2023 at 5.00% annually on the balance outstanding
8. If the unit is not vacated on or before January 16, 2023, then starting January 17, 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 January 17, 2023.

**January 6, 2023**  
**Date Issued**

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 Emily Robb  
 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 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.

2023 ONL TB 14057 (CanLII)

**Schedule 1  
SUMMARY OF CALCULATIONS**

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

Rent Owing To Hearing Date	\$20,958.90
Application Filing Fee	\$0.00
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	- \$3,000.00
<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>\$17,958.90</b>
Plus daily compensation owing for each day of occupation starting November 4, 2022	\$98.63 (per day)