



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Holborn Holdings Ltd v Dean, 2022 ONLTB 14074

**Date:** 2022-12-14

**File Number:** LTB-L-002045-21

**In the matter of:** 69, 21 HOLBORN DR  
KITCHENER ON N2A2E1

**Between:** Holborn Holdings Ltd Landlord

**And**

Earle Dean Tenant

Holborn Holdings Ltd (the 'Landlord') applied for an order to terminate the tenancy and evict Earle Dean (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 14, 2022.

The Landlord's Agent, Daniel Roosz, and the Tenant attended the hearing.

### Determinations:

1. This application was previously resolved on June 21, 2022 by way of a mediated settlement however as the mediated agreement was not issued, the matter was rescheduled to be heard *de novo*.
2. 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.
3. As of the hearing date, the Tenant was still in possession of the rental unit.
4. The lawful rent is \$2,018.94. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$66.38. This amount is calculated as follows: \$2,018.94 x 12, divided by 365 days.
6. The Tenant has paid \$5,473.00 to the Landlord since the application was filed.
7. The rent arrears owing to November 30, 2022 are \$19,990.34.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

9. The Landlord collected a rent deposit of \$1,895.00 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.
10. Interest on the rent deposit, in the amount of \$25.54 is owing to the Tenant for the period from October 1, 2021 to November 14, 2022.

### **Relief from eviction**

11. The Tenant did not dispute the amount of rent arrears owed and requested relief from eviction in the form of a repayment plan or, in the alternative, a 2-month postponement of the eviction. The Tenant testified he has recently secured a full time job and proposed a repayment plan of keeping his rent current and paying \$1,000.00 on the 20<sup>th</sup> of each month.
12. The Landlord's Agent submitted that although the Tenant has made some payments to the Landlord, these payments have been minimal. He submitted the current rent arrears are substantial and a payment plan would be prejudicial to the Landlord. He submitted the Tenant has made no effort to pay the rent in full since October 2021 nor make any payments towards the rent arrears.
13. The Tenant testified that he has recently secured a full time job and his expected monthly income will be between \$3,000.00 to \$3,600.00. He testified that he knows he has made mistakes but he would like to preserve the tenancy. He testified his girlfriend now lives with him and would assist financially with the monthly expenses.
14. With respect to the Tenant's proposal to keep the rent current and pay \$1,000.00 towards the arrears on the 20<sup>th</sup> of each month, the evidence that is most relevant to whether this proposal would result in unfairness to the Landlord is that which tells me about the Tenant's current capacity to keep the rent current and reduce the accumulated arrears and costs. Although the Tenant testified that he is gainfully employed, he did not provide any documentary evidence to show his actual monthly income nor did he provide evidence of his girlfriend's monthly income.
15. I understood the Tenant's proposal to pay the rent on time and to make monthly contributions towards the arrears on the 20<sup>th</sup> of every month as a commitment to adjust his expenses going forward so as to restore the tenancy to good standing. Based on the evidence provided with respect to monthly expenses, the Tenant stated his only expense in addition to the monthly rent is for utilities in the amount of \$200.00 per month. The current monthly rent is \$2,018.94 + utilities \$200.00 for a total of \$2,218.94. In addition, the Tenant proposed to pay \$1,000.00 per month towards the arrears.
16. Based on the Tenant's evidence of his monthly income and given his monthly expenses, I am not satisfied that the tenancy is viable. Even if the Tenant's monthly income is at the top end of his anticipated earnings, the funds left available each month would only be \$381.06.
17. I agree with the Landlord's Agent's submission that the terms of the Tenant's proposal are likely doomed to failure. To make this repayment plan possible, the Tenant would have little to no money available for food and clothing and other unexpected expenses.

18. The Divisional Court has affirmed, on numerous occasions, that eviction is a remedy of last resort. To take just two examples:

Eviction should be ordered as a last resort after carefully considering Section 84 [now 83] of the Act (*Britannia Glen Co-operative Homes v. Singh*, cited in *Toronto Community Housing Corp. v. Thompson*, [2003] O.R.H.T.D. No. 145).

To put somebody out of their home must, in my view, call for clear and compelling circumstances that it is no longer possible for the arrangement to continue (*Langford v. Phipps*, [1992] O.J. No. 4184 (Ont. Gen. Div.)).

19. In other words, eviction should only be ordered if it is not possible to bring a tenancy back into good standing. Based on the evidence before me, I am not satisfied that the Tenant has the financial capability to afford nor adhere to his proposed plan.
20. 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 January 31, 2023 pursuant to subsection 83(1)(b) 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:**
  - \$22,195.28 if the payment is made on or before December 31, 2022. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$24,214.22 if the payment is made on or before January 31, 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 31, 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 31, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$17,166.18. 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 \$66.38 per day for the use of the unit starting November 15, 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 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 1, 2023 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before January 31, 2023, then starting February 1, 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 February 1, 2023.

**December 14, 2022**  
**Date Issued**

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Susan Priest  
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 1, 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.

**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 December 31, 2022**

Rent Owing to December 31, 2022	\$27,482.28
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	- \$5,473.00
<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>\$22,195.28</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 31, 2023**

Rent Owing To January 31, 2023	\$29,501.22
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	- \$5,473.00
<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>\$24,214.22</b>

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

Rent Owing To Hearing Date	\$24,373.72
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	- \$5,473.00
<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	- \$1,895.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$25.54
<b>Total amount owing to the Landlord</b>	<b>\$17,166.18</b>
Plus daily compensation owing for each day of occupation starting November 15, 2022	\$66.38 (per day)