



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Skyline Living v Downes, 2022 ONLTB 13826

**Date:** 2022-12-07

**File Number:** LTB-L-017084-22

**In the matter of:** 609, 67 VILLAGE DR  
KINGSTON ON K7K6K7

**Between:** Skyline Living Landlord

**And**

Mandy Downes Tenant

Skyline Living (the 'Landlord') applied for an order to terminate the tenancy and evict Mandy Downes (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on September 29, 2022. .

Only the Landlord's representative Adelina Andreita attended the hearing.

As of 1:00 p.m. the Tenant was not 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 Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,713.90. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$56.35. This amount is calculated as follows: \$1,713.90 x 12, divided by 365 days.
5. The L1/ L9 update form signed and submitted to the Board on September 22, 2022 and contains errors as I have set out below:
  - a. The application lists NSF charges owed to the Landlord in the amount of \$80.00 for the following months: December 1, 2021 at \$20.00, February 1, 2022 at \$20.00,

March 1, 2022 at \$20.00 and April 1, 2022 at \$20.00. There is an error in the calculation of the Landlord's request for NSF charges.

- b. The L1/L9 update form lists the month of April 1, 2022 again as a new NSF charge that was not listed on the application. An additional date of May 1, 2022 is added to the L1/I9 update for an NSF charge of \$20.00.
  - c. The total NSF charges the Landlord claims on the L1/L9 update should total all of the charges on the L1 application and the new NSF charges added to the L1/L9 update form.
  - d. The Landlord lists the total NSF charges as \$200.00. Based on my calculations this amount is incorrect and the Tenant has been overcharged for NSF fees.
6. Due to the NSF calculations, I have noted above, and because the Landlord did not include receipts for the NSF charges in evidence, I am calculating the rent arrears owing less the NSF charges.
  7. Therefore, the rent arrears owing to September 30, 2022 will be set at \$200.00 less the NSF charges requested at a total rent arrears of \$2,955.74.
  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 \$1,693.59 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. The Landlord's representative testified that the Landlord has made numerous attempts to contact the Tenant to arrange a repayment plan but the Tenant has not responded. She also testified that the Landlord provided the Tenant with information to help connect the Tenant to a program that is offered by the Landlord "Rise" which assists Tenants in paying the rent arrears. The Tenant did not respond to the offer of support from the program.
  11. 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 3, 2022 pursuant to subsection 83(1)(b) of the Act. This will allow for the Tenant an opportunity to preserve the tenancy if the Tenant the pays the arrears before the eviction date set in this order.

**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:**
  - **\$9,997.34** if the payment is made on or before January 17, 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 17, 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 17, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. 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 \$56.35 per day for the use of the unit starting October 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 17, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 18, 2023 at 5.00% annually on the balance outstanding.
8. If the unit is not vacated on or before January 17, 2023, then starting January 18, 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 18, 2023.

**January 3, 2023**

**Date Issued**

\_\_\_\_\_  
Maria Shaw

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 June 19, 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 December 18, 2022**

|  |                   |
|--|-------------------|
| Rent Owing To December 31, 2022  | \$9811.34         |
| 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>\$9,997.34</b> |

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

|  |                      |
|--|----------------------|
| Rent Owing To Hearing Date   | \$2,955.74.          |
| 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                                | - \$1,693.59         |
| <b>Less</b> the amount of the interest on the last month's rent deposit                | - \$20.05            |
| <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>\$1428.10</b>     |
| Plus, daily compensation owing for each day of occupation starting October 1, 2022     | \$56.35<br>(per day) |

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