



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

**Citation:** Subhra Dutta v Holden, 2022 ONLTB 13866

**Date:** 2022-12-05

**File Number:** LTB-L-012182-22

**In the matter of:** MAIN FLOOR, 152 WEBER STREET EAST  
KITCHENER ON N2H1C9

**Between:** Subhra Dutta Landlord

**And**

Elizabeth Holden, Howard Holden Tenant

Subhra Dutta (the 'Landlord') applied for an order to terminate the tenancy and evict Elizabeth Holden, Howard Holden (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes; and, because the Tenants, or their guest or occupant, have substantially interfered with the Landlords' reasonable enjoyment of the residential complex and/or lawful rights, privileges or interests.

The Landlord and the Tenants attended the hearing on October 13, 2022, however, partially through the hearing, the Tenants requested a 5-minute break and exited the hearing room and did not return. As it was unclear if the Tenants had deliberately decided not to return or whether they were simply experiencing technical difficulties, the matter was adjourned to October 27, 2022 and new notices of hearing were sent out to the parties. Only the Landlord and the Landlord's representative E. Anani attended the hearing on October 27, 2022.

**Determinations:**

N4/L1 Application

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment 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 is \$2,210.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$72.66. This amount is calculated as follows: \$2,210.00 x 12, divided by 365 days.
5. The Tenants have paid \$2,439.00 to the Landlord since the application was filed.
6. The rent arrears owing to October 31, 2022 are \$17,475.67.

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 \$2,210.00 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.

### Section 83

9. Section 83 requires that I consider all the circumstances, including the Tenants' and the Landlord's situations to determine if it would be appropriate to grant section 83 relief from eviction.
10. There are substantial arrears owing and the arrears have caused a financial strain to the Landlord. The Landlord further submits that she has tried to reach out to the Tenants regarding a repayment plan, without success.
11. The Tenants did not attend the hearing on October 27, 2022, and thus did not provide any evidence that may be relevant to my determination under s. 83. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including whether the Landlord attempted to negotiate a repayment agreement with the Tenants, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

### N5/L2 Application

12. The Landlord filed an L2 Application on March 2, 2022 on the basis the Tenants' conduct or the behaviour of someone visiting or living with the Tenant has substantially interfered with another Tenant's or the Landlord's reasonable enjoyment of the residential complex and/or lawful rights, privileges, or interests.
13. The Landlord served two Form N5s upon the Tenants. The 1<sup>st</sup> Form N5 contains a termination date of February 24, 2022, with a service date of February 10, 2022. The Landlord also served a 2<sup>nd</sup> Form N5 pursuant to section 68(1) of the Residential Tenancies Act, 2006 (the "Act") which provides that notice of termination may be given for activities or conduct occurring more than 7 days after the service of the 1<sup>st</sup> Form N5. A plain reading of section 68 suggests the Landlord may only serve a 2<sup>nd</sup> Form N5 if at least seven days has passed; and, if new behaviour occurs. This is not what happened here, and thus the Landlord was advised at the hearing that I would not be considering the Landlord's 2<sup>nd</sup> Form N5. As the Landlord's L2 application was filed within 30 days of the notice of termination under the 1<sup>st</sup> Form N5, the Landlord elected to proceed under the voidable, 1<sup>st</sup> Form N5.
14. I find the Tenants substantially interfered with the Landlord's reasonable enjoyment of the residential complex and/or lawful rights, privileges or interests, and that the Tenants did not void the 1<sup>st</sup> Form N5
15. The Landlord attended at the property in December 2021 and discovered the property to be in poor state of neglect, with the accumulation of a significant amount of garbage both inside and outside of the rental unit. Upon return to the rental unit for an inspection on February 1,

2022 and notwithstanding the Tenants' prior assurances, the accumulation of garbage remained, and it was discovered that a smoke detector had been removed.

16. As evidence that the Tenants did not void the Form N5, the Landlord returned to the property at the end of March and on April 9, 2022 and once again, noticed garbage and the removal of a smoke alarm. The Landlord produced a Site Evaluation Report dated August 4, 2022 from Einwechter Electric noting that the some of the smoke detectors are removed from the ceiling; and that, the building is 'a public health concern' due to vising hoarding.
17. Based upon the Landlord's uncontested evidence, I find the Tenants' failure to maintain the property in a state of ordinary cleanliness and the Tenants' tampering with the smoke detectors have created a safety concern. I therefore find the Tenants' conduct, or the behaviour has substantially interfered with the Landlord's reasonable enjoyment of the residential complex and/or lawful rights, privileges, or interests. In my view, it would not be unfair to deny the eviction so long as the rental unit is returned and maintained in a state of ordinary cleanliness. I understand and sympathise with the Landlord's concerns, however if the unit is returned to an acceptable standard, those concerns will be satisfied. As a result conditional relief will be granted in respect of the Landlord's L2 Application.

**It is ordered that:**

Form N4 / L1 Application

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$22,081.67 if the payment is made on or before December 31, 2022. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$24,291.67 if the payment is made on or before January 6, 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 Tenant has paid the full amount owing as ordered plus any additional rent that became due after January 6, 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 Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before January 6, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$15,178.05. 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 \$72.66 per day for the use of the unit starting October 28, 2022 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before December 20, 2022, the Tenants will start to owe interest. This will be simple interest calculated from December 21, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before January 6, 2023, then starting January 7, 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 7, 2023.

Form N5 / L2 Application

In the event the Tenants void the order as set out in paragraph 2 above, it is ordered as follows:

10. The Tenants shall maintain an ordinary state of cleanliness in both the inside and outside of the rental unit.
11. The Tenants shall not remove, tamper, or otherwise interfere with the proper functioning of the smoke alarms in the rental unit.
12. If the Tenants breach paragraphs 10 or 11 of this order within 1 year of the date of this order, the Landlord may, without notice to the Tenants, apply to the Board pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenants. The Landlord must make this application no later than 30 days after the Tenants' breach of paragraphs 10 or 11 of this order.

**December 9, 2022**  
**Date Issued**

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Peter Nicholson  
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 7, 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 31, 2022**

Rent Owing To December 31, 2022	\$24,334.67
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	- \$2,439.00
<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>\$22,081.67</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 6, 2023**

Rent Owing To January 31, 2023	\$26,544.67
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	- \$2,439.00
<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	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$24,291.67</b>

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

Rent Owing To Hearing Date	\$19,666.48
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	- \$2,439.00
<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	- \$2,210.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$25.43
<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
<b>Total the Tenant must pay if the Tenancy is terminated</b>	<b>\$15,178.05</b>