



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Bloomingdale Mews Ltd v Tufts, 2022 ONLTB 13860

**Date:** 2022-12-05

**File Number:** LTB-L-022642-22

**In the matter of:** 409, 593 STRASBURG RD  
KITCHENER ON N2E4J1

**Between:** Bloomingdale Mews Ltd Landlord

**And**

Brent Tufts Tenant

Bloomingdale Mews Ltd (the 'Landlord') applied for an order to terminate the tenancy and evict Brent Tufts (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 8, 2022.

The Landlord's Agent Daniella Marin and the Tenant attended the hearing.

### 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 \$1,008.17. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$33.15. This amount is calculated as follows: \$1,008.17 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to November 30, 2022 are \$8,065.36.
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 \$1,008.17 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.
9. Interest on the rent deposit, in the amount of \$10.34 is owing to the Tenant for the period from January 1, 2021 to November 8, 2022.

Section 82 issues

10. Section 82 of the Act states in part:

**82 (1)** At a hearing of an application by a landlord under section 69 for an order terminating a tenancy and evicting a tenant based on a notice of termination under section 59, the Board shall permit the tenant to raise any issue that could be the subject of an application made by the tenant under this Act.
11. The Tenant raised a maintenance issue, namely that water leaks into the rental unit when it rains causing mold in the second bedroom.
12. The Tenant testified that he told the Landlord's Agent about this on September 23, 2021 and the issue is still not rectified till the hearing date. The last communication he had with the Landlord was in March 2022 and since then there has been no updates and no steps have been taken to address the issue or clean the mold in the unit.
13. The Landlord's Agent testified that the Landlord was aware of the issue and had received quotes from two different companies and had finalised one of them but due to COVID related delays the work was still pending. The company had given them a final date of December 13, 2022 to start and finish work in 3 days time to the exterior of the building and then move to the inside of the three affected units. The Landlord's Agent in her post hearing submissions sent the two quotes and pictures of the affected area and the timeline of communication with the Tenant.
14. The quotes from the construction companies were obtained in November 2021. The Landlord did get their own maintenance crew to clean the condensate line in the whole stack of apartments on the Tenant's side of the building in order to mitigate the issue. No supporting evidence was provided to support the Landlord's assertion that their contractor, was unable perform the repairs for a whole year due to COVID.
15. The Landlord's Agent questioned if the Tenant had tested to see if there was actual mold and he testified in the negative, but he did say the picture clearly showed that there was mold and the Landlord has done nothing for more than 13 months to clean it out. The Landlord's Agent also submitted that the Tenant did not raise a maintenance request with the Landlord but had mentioned about the problem in a previous Board hearing like this.
16. Section 20(1) of the Act states:

**20 (1)** A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.
17. Based on the evidence before the Board, I am satisfied that the Landlord has failed to maintain to rental unit in a good state of repair as required by s.20(1). The evidence before the Board indicates that the Landlord has been aware of the water leakage and possible mould growth since September 2021, but has failed to take steps in a reasonable time frame to correct the issue. The Landlord is not absolved of their maintenance obligations due to COVID. There is no evidence to establish that the delays were due to COVID, submitted by the Landlord.

18. For the maintenance issues, I find that the Tenants should be awarded an abatement of rent in the amount of \$655.31. This amount is equal to 5% of the rent from November 2021 to November 2022 for water leakage and resulting mold in the rental unit. The rent abatement shall be applied to the rent arrears.

Section 83 considerations

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.
20. The Landlord's Agent testified that this was the fourth time the Landlord and the Tenant were before the Board for rent arrears. The Tenant is not a bad Tenant but his rent arrears are a regular problem.
21. The Tenant testified that he had the rent arrears in a bank draft in his hand and that he will make the payment immediately and that due to COVID he lost almost a month of wages which brought him back and he has worked overtime to make up the lost wages. The Tenant also testified that with the help of his guarantor he is setting up a direct deposit with the Landlord for rent so that this issue does not arise again in the future.
22. As the Tenant has indicated an ability to pay the arrears immediately, no relief from eviction is necessary.

**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:**
  - \$8,604.22 if the payment is made on or before December 16, 2022. 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 December 16, 2022 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 December 16, 2022**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$5,834.57. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit, rent abatement 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 \$33.15 per day for the use of the unit starting November 9, 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 December 16, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 17, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 16, 2022, then starting December 17, 2022, 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 December 17, 2022.

**December 5, 2022**  
**Date Issued**

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Sheena Brar  
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 17, 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 16, 2022**

Rent Owing To December 31, 2022	\$9,073.53
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}	- \$655.31
<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>\$8,604.22</b>

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

Rent Owing To Hearing Date	\$7,322.39
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	- \$1,008.17
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$10.34
<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$655.31
<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>\$5,834.57</b>
Plus daily compensation owing for each day of occupation starting November 9, 2022	\$33.15 (per day)