



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Banken v Foggo, 2022 ONLTB 13142

**Date:** 2022-11-30

**File Number:** LTB-L-028976-22

**In the matter of:** 5866 Shay Downs  
Mississauga, ON L5M 3G3

**Between:** Anthony Banken Landlord

**And**

Darlene Foggo Tenant

Anthony Banken (the 'Landlord') applied for an order to terminate the tenancy and evict Barbara Foggo, Brianna Morehouse, and Darlene Foggo (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe;

Further, the Landlord applied for an order to terminate the tenancy and evict the Tenants because the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year. The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on October 18, 2022.

The Landlord, their representative, P. Balatidis and the Tenant and their representative, J. McDougall attended the hearing.

**Preliminary Issue:**

It was uncontested that Darlene Foggo is the sole Tenant in the rental unit. The application will be amended to reflect that there is one Tenant.

**Determinations:**

L2 Application

1. On February 22, 2022, the Landlords served the Tenants a Notice to Terminate at End of the Term for Landlord's Own Use (the 'N12 notice') with a termination date of April 30, 2022.
2. Sections 48.1 and 55.1 of the *Residential Tenancies Act, 2006* (the 'Act') require a landlord to pay the tenant compensation equal to one month's rent prior to the termination date specified in the N12 Notice. Section 55.1 of the Act states that "the landlord shall

compensate the tenant no later than on the termination date specified in the notice of termination given by the landlord ..." [Emphasis added].

3. The Tenant's Legal Representative requested that the L2 Application be dismissed as the Landlord failed to pay the compensation owing in compliance with the Act.
4. The Landlord testified that he paid the compensation to the Tenant by waiving the rent for the month of March 2022. The notification of this waiving of the March 2022 rent was sent via email on May 25, 2022.
5. Having assessed the evidence before us, we find that the Landlord failed to pay the compensation to the Tenant on or before the termination date of April 30, 2022.
6. The Landlord's application must be dismissed.
7. With the dismissal of the L2 application, the Tenant is ordered to refund the one month of compensation given to the Tenant by the Landlord in the amount of \$1675.00.

L1 Application:

8. 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.
9. As of the hearing date, the Tenant was still in possession of the rental unit.
10. The lawful rent is \$1,675.00. It is due on the first day of each month.
11. Based on the Monthly rent, the daily rent/compensation is \$55.07. This amount is calculated as follows: \$1,675.00 x 12, divided by 365 days.
12. The Tenant has not made any payments since the application was filed.
13. The rent arrears owing to October 31, 2022, including the refund of the one month of compensation for the dismissed L2 application, are \$18,250.00.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. There is no last month's rent deposit.

Tenant's Motion to dismiss the L1 Application

16. The Tenant's Legal Representative requested that the L1 Application be dismissed as they asserted the rent arrears calculation was incorrect. The Landlord testified that he could not remember the arrears owing as his files showing the amounts were not in front of him. He however stated that the calculations were correct based on his records when he completed the L1 application.

17. The Tenant provided no evidence to show that any of the payments had been made or to contradict the Landlord's calculation of the rent arrears. Based on the evidence before us, we are satisfied on a balance of probabilities that the amounts presented in the L1 application and the update sheet are correct.

Relief from eviction

18. We 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

19. We find that the Landlord will be prejudiced if the tenancy is extended as the rent arrears are very high, the Tenant has not been paying the rent as it falls due, and the Landlord has been living in a motel awaiting the vacating of the house. Receipts were received by the Board proving this. As the Tenant has had substantial time to find alternative housing, we do not find that an extension of time would be reasonable.

**It is ordered that:**

20. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.

**21. The Tenant may void this order and continue the tenancy by paying to the Landlord:**

1. \$20,111.00 if the payment is made on or before December 10, 2022. See Schedule 1 for the calculation of the amount owing.

22. 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 11, 2022 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.

**23. 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 11, 2022.**

24. If the Tenant does not void the order, the Tenant shall to the Landlord \$17,752.26. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.

25. The Tenant shall also pay the Landlord compensation of \$55.07 per day for the use of the unit starting October 19, 2022 until the date the Tenant moves out of the unit.

26. If the Tenant does not pay the Landlord the full amount owing on or before December 11, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 12, 2022 at 4.00% annually on the balance outstanding.

27. If the unit is not vacated on or before December 11, 2022, then starting December 12, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

28. 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 12, 2022.

**November 30, 2022**  
**Date Issued**

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William Greenberg  
Member, Landlord and Tenant Board

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Jagger Benham  
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 12, 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 10, 2022**

Rent Owing To November 30, 2022	\$19,925.00
Application Filing Fee	\$186.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$19,925.00</b>

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

Rent Owing To Hearing Date	\$17,566.26
Application Filing Fee	\$186.00
<b>Total amount owing to the Landlord</b>	<b>\$17,752.26</b>
Plus daily compensation owing for each day of occupation starting October 19, 2022	\$55.07 (per day)