



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Shih v Notter, 2022 ONLTB 11966

**Date:** 2022-11-25

**File Number:** LTB-L-007830-22

**In the matter of:** 150 HILLCREST DR  
WHITBY ON L1N3C2

**Between:** Ivan Shih Landlord

**And**

Caroline Notter Tenant

Ivan Shih (the 'Landlord') applied for an order to terminate the tenancy and evict Caroline Notter (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 10, 2022.

The Landlord and the Tenant attended the hearing.

### Determinations:

#### Section 82:

1. The August 26, 2022 Interim Order states that many of the section 82 allegations and requested remedies raised by the Tenant were unclear. The Tenant was directed to revise the s. 82 disclosure forms to clarify allegations and remedies, including details of issues, times, dates and sufficient information to allow the Landlord to understand and respond.
2. The Tenant confirmed at the hearing that she had not submitted any clarifying information to the Landlord or the Board. The Tenant was advised that the s. 82 issues would therefore not be addressed at the hearing but that she had the right to bring her own Tenant's application to address her concerns.

#### The L1 Application:

3. 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.
4. As of the hearing date, the Tenant was still in possession of the rental unit.
5. The lawful rent is \$2,950.00. It is due on the 1st day of each month.

6. Based on the Monthly rent, the daily rent/compensation is \$96.99. This amount is calculated as follows: \$2,950.00 x 12, divided by 365 days.
7. The Tenant has paid \$2,950.00 to the Landlord since the application was filed.
8. The rent arrears owing to November 30, 2022 are \$32,450.00.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. The Landlord collected a rent deposit of \$2,950.00 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.
11. Interest on the rent deposit, in the amount of \$30.46 is owing to the Tenant for the period from November 1, 2021 to November 10, 2022.
12. The Interim Order dated August 26, 2022 directed the Tenant to pay the monthly rent in full and on time from September 1, 2022 until the date of the hearing. The Tenant made one payment of \$2,950.00 for the September 2022 rent. No payments for October or November were made.
13. The Landlord testified that he is a private individual landlord and that paying the mortgage on the property while receiving no rent for a year has caused him significant emotional and financial stress.
14. The Tenant did not dispute the amount of arrears owing and testified that she did not pay "on principle" because she was dissatisfied with maintenance issues and with communications overall with the Landlord. She proposed a payment plan which the Landlord did not accept.
15. It was uncontested that the Tenant made one rent payment in the 12 months that she had resided in the rental unit. While she acknowledged that she was wrong to do this and proposed a payment plan which could in some circumstances be reasonable, I must also consider the position of the Landlord.
16. The Landlord is a private individual who is paying a mortgage on the rental property. The Landlord has not been able to make any other rental income while the Tenant has been in possession. The Tenant owes him \$32,450.00 and made the only rent payment after the Interim Order of the Board. Even then, she disregarded the Order and failed to make the October and November rent payments. She also failed to comply with the direction to clarify the Tenant issues that she raised on the claim, which she had used as justification for not paying the Landlord any rent.
17. The Landlord has and will continue to suffer great prejudice if the tenancy is permitted to continue. The Tenant has made no payments or partial payments to demonstrate any good faith or to provide the Landlord or the Board with any indication that she would comply with any payment plan.
18. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act for the reasons noted above.

**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 LTB in trust:**
  - \$32,636.00 if the payment is made on or before November 30, 2022. See Schedule 1 for the calculation of the amount owing.
  - \$33,217.94 if the payment is made on or before December 6, 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 6, 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 6, 2022**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$27,675.44. 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 \$96.99 per day for the use of the unit starting November 11, 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 6, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 6, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 6, 2022, then starting December 7, 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 7, 2022.

**November 25, 2022****Date Issued**\_\_\_\_\_  
Margo den Haan

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 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.

**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 November 30, 2022**

Rent Owing To November 30, 2022	\$35,400.00
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	- \$2,950.00
<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>\$32,636.00</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 6, 2022**

Rent Owing To December 6, 2022	\$ 35,981.94
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	- \$2,950.00
<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>\$33,217.94</b>

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

Rent Owing To Hearing Date	\$33,419.90
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	- \$2,950.00
<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	- \$2,950.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$30.46
<b>Total amount owing to the Landlord</b>	<b>\$27,675.44</b>
Plus daily compensation owing for each day of occupation starting November 11, 2022	\$96.99 (per day)

