



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Depikolozvane v Cassidy, 2022 ONLTB 12990

**Date:** 2022-11-23

**File Number:** LTB-L-020504-22

**In the matter of:** 2057 PARKLANE CRES  
BURLINGTON ON L7M3V6

**Between:** Andelko Depikolozvane Landlord

**And**

Dan Cassidy, Leanne Cassidy Tenant

Andelko Depikolozvane (the 'Landlord') applied for an order to terminate the tenancy and evict Dan Cassidy, Leanne Cassidy (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 13, 2022.

The Landlord and the Tenants, Dan Cassidy (DC) and Leanne Cassidy (LC) attended the hearing.

### Determinations:

#### Preliminary Matter

1. The Landlord's Form N4 was served March 14, 2022, with a termination date of March 30, 2022. As a preliminary matter, the Tenants stated the stipulated rental periods on page 2 of the Landlord's Form N4 was incorrect. The Landlord acknowledged that the "From" box on the first line of page 2 should read "01/01/2022" as oppose to "01/02/2022" and that the "To" box on the second line of page 2 should read "31/03/2022" as oppose to "28/02/2022".
2. Section 59 of the Residential Tenancies Act, 2006 (the "Act") provides that the notice of termination "*shall set out the amount of rent due...*" [emphasis added], as well as the amount of rent due prior to the termination date in order to avoid termination of tenancy. I find the Landlord has complied with section 59(2) of the Act. The Tenants specifically acknowledged the Form N4 stipulated rent amount owing (\$4,900) was correct. When the Tenants were asked if they had an issue with the rent amount owing on the Landlord's Form N4 when the document was served in March 2022, the Tenant DC stated: "*the amount is correct we're not denying that, that's for sure*". Upon hearing the submissions of the parties, I find the Tenants were made aware of the specific allegations (i) to know the case that must be met; (ii) to decide whether to dispute the allegations; and (iii) to consider whether to void the notice. I therefore find the Landlord served a valid Form N4.

L1/N4

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 \$3,900.00. It is due on the 1st day of each month.
6. Based on the Monthly rent, the daily rent/compensation is \$128.22. This amount is calculated as follows: \$3,900.00 x 12, divided by 365 days.
7. The Tenant has paid \$7,800.00 to the Landlord since the application was filed.
8. The rent arrears owing to October 31, 2022 are \$24,400.00.
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 \$3,900.00 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 \$68.34 is owing to the Tenant for the period from April 29, 2020 to October 13, 2022.

### Section 83

12. 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.
13. The Landlord seeks immediate eviction, noting he has been told numerous times that payment would be forthcoming, but it has not. The Landlord indicated he has tried to reach out to the Tenants about a repayment plan, without success. The arrears owing are substantial and the Landlord noted there have been no payments in nearly 6 months.
14. The Tenants have two children, ages 18 and 20, and are self employed. Although they seek to remain in the rental unit, the Tenants' evidence was vague as to how and when they would be able to pay back the arrears over time.
15. Moreover, I found the Tenants evidence vague as to their overall financial situation. The Tenant LC noted the Tenants are waiting upon a CRA refund and that given the nature of their employment, they get paid in "large sums". LC also noted she is starting a new work placement at a medical lab and may also be able to pay the arrears with her OSAP payment upon her return for additional schooling. Although LC stated the Tenants collectively earn \$7000/month, no documentary proof was rendered in support.
16. The Tenant DC noted that should eviction be ordered they would require time in order to come up with "first and last" months rent, as well as moving expenses. Given the long history of no rent being paid and given the Tenants admitted precarious financial situation, I am not

satisfied the Tenants will be in a position to pay the monthly rent of \$3900 and in addition to complying with a repayment plan moving forward.

17. 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 Tenants, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants 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:**
  - \$28,486.00 if the payment is made on or before November 30, 2022. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$32,386.00 if the payment is made on or before December 4, 2022. 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 Tenants have paid the full amount owing as ordered plus any additional rent that became due after December 4, 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 Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before December 4, 2022**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$18,384.52. 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 Tenants shall also pay the Landlord compensation of \$128.22 per day for the use of the unit starting October 14, 2022 until the date the Tenant moves out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before December 4, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 5, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 4, 2022, then starting December 5, 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 5, 2022.

**November 23, 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 June 5, 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	\$36,100.00
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	- \$7,800.00
<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>\$28,486.00</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 4, 2022**

Rent Owing To December 31, 2022	\$40,000.00
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	- \$7,800.00
<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>\$32,386.00</b>

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

Rent Owing To Hearing Date	\$29,966.86
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	- \$7,800.00
<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	- \$3,900.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$68.34
<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>\$18,384.52</b>
Plus daily compensation owing for each day of occupation starting October 14, 2022	\$128.22 (per day)