



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Blue Bird Apartments v Moulton, 2022 ONLTB 12577

**Date:** 2022-11-23

**File Number:** LTB-L-020986-22

**In the matter of:** 908, 195 NATCHEZ RD  
KITCHENER ON N2B1W2

**Between:** Blue Bird Apartments Landlord

**And**

Agnes Moulton Tenant

Blue Bird Apartments (the 'Landlord') applied for an order to terminate the tenancy and evict Agnes Moulton (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 26, 2022.

The Landlord's Representative Eric Schroeder and the Tenant attended the hearing.

### Determinations:

#### Adjournment Request

1. At the outset of the hearing the Tenant sought an adjournment for two reasons. The first was because the Tenant indicated that she had several documents that she wanted to introduce into evidence, but she has no access to the internet and had to mail the document package into the Landlord and Tenant Board ('the Board'). The mailed package had not yet arrived at the Board. I asked the Tenant what documents she had mailed, and she indicated that the documents included in the package were the lease of the rental unit, documents regarding above guideline rent increases of the unit, and the Tenant's written evidence about the rent and the issues in the rental unit.
2. The Landlord had already filled with the Board documents regarding above guideline rent increases and both parties had a copy of those documents. I asked the Tenant why I needed to see a copy of the lease and it was not made clear what relevant issue the lease would speak to. The Tenant's written evidence was also not required as the Tenant was present at the hearing to provide their oral testimony. As such, the adjournment request based on the Tenant requiring time to send in their documents was denied.
3. Since the hearing date the Tenant's document brief has arrived at the Board. It is 101 pages and appears to include several documents regarding the tenancy. At the hearing I asked the Tenant repeatedly what documents were in her disclosure package and was only told about the lease, the above guideline increases documents, and her written testimony. The Tenant did make mention of wanting to go back to the beginning of the

tenancy but did not mention what specific documents I needed to do that or why those documents were relevant to an issue before me. As the Tenant's disclosure package arrived after the hearing and the Tenant was provided with an opportunity to explain what documents were in the package and why I needed to adjourn the matter to receive those documents, none of the additional documents in the Tenant's disclosure binder have been considered.

4. The second reason that the Tenant sought an adjournment was to obtain a legal representative. The N4 Notice of Termination was deemed served on the Tenant as of March 26, 2022. The Notice of Hearing was mailed to the Tenant as of October 7, 2022. The right to a legal representative is not absolute and the Tenant had sufficient time to retain legal representation.

#### The Application

5. 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.
6. As of the hearing date, the Tenant was still in possession of the rental unit.
7. The Tenant testified that the lawful rent should be \$1,117.34. However, the Landlord introduced into evidence a copy of an N1 Notice of Rent increase which shows that the rent was raised to \$1,253.15 on July 1, 2022. That increase was not an above guideline increase. Prior to that, in file SWL-22209-18 an above guideline increase was approved by the Board. As such I accept the evidence of the Landlord that the lawful rent is \$1,253.15.
8. Rent is due on the 1st day of each month.
9. Based on the Monthly rent, the daily rent/compensation is \$41.20. This amount is calculated as follows:  $\$1,253.15 \times 12$ , divided by 365 days.
10. The Tenant has not made any payments since the application was filed.
11. The rent arrears owing to October 31, 2022 are \$14,214.94.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
13. There is no last month's rent deposit.
14. The Tenant requested relief from eviction in the form of a postponed eviction. The Tenant testified that she lost her job in October 2022. She also testified that she is currently looking into receiving government assistance. The Tenant testified that in 2018 she was injured at work and that has made working difficult.
15. The Landlord is opposed to any postponement of the eviction.
16. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including that the Landlord attempted to negotiate a repayment agreement with the Tenant in October 2022 and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. I have

considered that the Tenant suffered an injury at work in 2018 and that has made working difficult for her. However, I have also taken into consideration that the rent arrears are extremely high and that the Tenant testified that she lost her job in October 2022, yet rent has not been paid since the application was filed in April 2022.

**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:**
  - \$15,654.09 if the payment is made on or before November 30, 2022. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$16,907.24 if the payment is made on or before December 4, 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 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 Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before December 4, 2022.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$14,218.99. 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.
6. The Tenant shall also pay the Landlord compensation of \$41.20 per day for the use of the unit starting October 27, 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 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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Amanda Kovats

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	\$15,468.09
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>Total the Tenant must pay to continue the tenancy</b>	<b>\$15,654.09</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	\$16,721.24
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>Total the Tenant must pay to continue the tenancy</b>	<b>\$16,907.24</b>

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

Rent Owing To Hearing Date	\$14,032.99
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	- \$0.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$14,218.99</b>
Plus daily compensation owing for each day of occupation starting October 27, 2022	\$41.20 (per day)