



**Order under Section 69  
Residential Tenancies Act, 2006**

**Citation:** Ughratdar v Vasdekis, 2022 ONLTB 12160

**Date:** 2022-11-17

**File Number:** LTB-L-016428-22

**In the matter of:** 1911 (PH11), 15 VICORA LINKWAY  
Toronto ON M3C1A9

**Between:** Rashid Mohmed Ughratdar Landlord

**And**

Eleni Vasdekis, Jenny Vasdekis Tenant

Rashid Mohmed Ughratdar (the 'Landlord') applied for an order to terminate the tenancy and evict Eleni Vasdekis, Jenny Vasdekis (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on September 29, 2022.

The Landlord and the Landlord's representative, Owais Rashid Ughratdar, the Landlord's son, attended the hearing. The first named Tenant attended the hearing. An occupant of the rental unit, Angelo Vasdekis, the Tenant's son attended the hearing as support to the Tenant and to represent the Tenant at the hearing. For the purpose of this order Angelo Vasdekis will be referred to AV.

**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 \$1,700.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$55.89. This amount is calculated as follows: \$1,700.00 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 September 30, 2022 are \$15,000.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

8. There is no last month's rent deposit.

#### PRELIMINARY MATTER: ONE TENANT HAS VACATED

9. At the hearing the Jenny Vasdekis (JV) submitted that Eleni Vasdekis (EV) named on the application, had vacated the rental unit on June 1, 2022. The application filed by the Landlord to the Board was filed on March 23, 2022. Eleni Vasdekis was in possession at the time the application was filed with the Board and although she has vacated the rental unit, she will remain on this order.

#### LANDLORD'S APPLICATION

10. The Tenant did not dispute the arrears owing up to March 31, 2022 as indicated on the application filed with the Board, however the Tenant disputed the arrears incurred after the application up to the date of the hearing. The position of the Tenant is that Angelo started paying rent on behalf of his mother and sister starting in March 2022 and the Landlord has not accounted for those payments in their update sheet provided to the Board. AV testified to dates and details regarding the cash payments made to the Landlord and provided specific dates and amounts that were paid to the Landlord, although AV did not submit any receipts from the Landlord showing he had paid cash. AV later testified that the September 2022 rent had in fact not been paid, although earlier claimed there were no arrears owing from April 2022 up to the day of the hearing. AV testified he had stopped working full time from May 2022 up to September 2022 and is employed in the construction industry.
11. The position of the Landlord is that they have received no cash payments in rent and the Landlord disputed the testimony of AV with respect to the dates AV paid cash to the Landlord. The Landlord claims he was never at the unit on the days AV testified to and had not been to the rental unit in months. The Landlord testified that he was receiving etransfer payments for rent directly from JV from May 2020 up to January 2022 the last month the Landlord had received any payment. The Landlord testified that even when JV made partial rent payment the payments were always by etransfer. The Landlord submitted that EV had also made rent payments during this time and she too made payments to the Landlord by etransfer, and at no point did the Tenants ever pay cash. The Landlord testified that arrears are substantial and he is a small Landlord and has had to take out a line of credit to carry the mortgage payments.
12. The standard of proof in proceedings before this Board is "proof on a balance of probabilities." By that standard, the party bearing the burden of proof must show with evidence that, "more likely than not", their assertions are true. Neither the Landlord, nor the Tenants, submitted any documented evidence to the Board in support of their claims, relying solely on the oral testimony provided by both parties. With respect to the arrears

claimed by the Landlord. The onus rests with the Tenants to provide sufficient evidence to support their claim they paid the rent to the Landlord in cash. I do not find the Tenants evidence persuasive enough, relying solely on their oral testimony as evidence they paid their rent from April 2022 to August 2022 in cash in person to the Landlord, after almost two years of paying by e-transfer. While AV provided dates on which he claims to have paid the Landlord, I must consider the pattern of established behaviour of Landlord and Tenant relationship prior to AV's claims he started paying the rent on behalf of the Tenants.

### THE ACT AND ANALYSIS

*202 (1) In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so,*

*(b) may have regard to the pattern of activities relating to the residential complex or the rental unit.*

The Tenants did not dispute they made their payments to the Landlord by e-transfer from May 2020 up to January 2022. This long standing pattern of behaviour regarding payments by the Tenants to the Landlord, establishes the basis for my findings with respect to s. 202 and on the balance of probabilities I find it more likely the Tenant stopped making the e-transfer payments and did not replace these payments with cash.

13. 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. I have considered whether the Landlord attempted to negotiate a repayment agreement with the Tenants and weighed the quantum of the arrears owed to the Landlord against the long tenure of the tenancy and how a delay in eviction will further prejudice the Landlord incurring more arrears. In considering all of the above I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
14. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations
15. This order contains all reasons for the determinations and order made. No further reasons will be issued.

### **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:

- \$18,586.00 if the payment is made on or before November 28, 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 November 28, 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 November 28, 2022
  5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$15,106.81. 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 \$55.89 per day for the use of the unit starting September 30, 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 November 28, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 29, 2022 at 4.00% annually on the balance outstanding.
  8. If the unit is not vacated on or before November 28, 2022, then starting November 29, 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 November 29, 2022.

**November 17, 2022**

**Date Issued**

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Greg Brocanier

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 May 29, 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.

\*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

**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 28, 2022**

Rent Owing To November 30, 2022	\$18,400.00
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	- \$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}	- \$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>\$18,586.00</b>

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

Rent Owing To Hearing Date	\$14,920.81
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	- \$
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord</b>	<b>\$15,106.81</b>
Plus daily compensation owing for each day of occupation starting September 30, 2022	\$55.89 (per day)

