



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Prepolec v Prepolec, 2022 ONLTB 11775

**Date:** 2022-11-10

**File Number:** LTB-L-017848-22

**In the matter of:** 2815 LLOYD GEORGE BLVD  
WINDSOR ON N8T2T8

**Between:** Fernanda Prepolec Landlord

**And**

Shantelle Prepolec Tenant

Fernanda Prepolec (the 'Landlord') applied for an order to terminate the tenancy and evict Shantelle Prepolec (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. (L1 application)

The Landlord also applied for an order to terminate the tenancy and evict the Tenant 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 Tenant remained in the unit after the termination date. (L2 application)

These L1 and L2 applications were heard by videoconference on November 2, 2022.

Only the Landlord and the Landlord's Legal Representative, John Kulikowski, attended the hearing.

As of 10:55 am, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

### **Determinations:**

#### L1 Application

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 \$550.00. It is due on the 1<sup>st</sup> day of each month.

4. Based on the monthly rent, the daily rent/compensation is \$18.08. This amount is calculated as follows: \$550.00 x 12 months, divided by 365 days.
5. The Tenant has paid \$6,600.00 to the Landlord since the L1 application was filed.
6. The rent arrears owing to November 30, 2022 are \$600.00.
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.
9. The Landlord made submissions on her efforts to communicate with the Tenant, who is her daughter, about the rent arrears and trying to have them paid off. The Landlord indicated the Tenant did make up most of the rent arrears leaving only \$600.00 (plus the filing fee) as the current rent amount to be paid off.
10. 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 Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

### L2 Application

11. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the L2 application. Therefore, the tenancy will be ordered to end on January 31, 2023.
12. The Tenant was in possession of the rental unit on the date the L2 application was filed.
13. On March 4, 2022, the Landlord served the Tenant an N12 notice of termination with the termination date of May 31, 2022. The Landlord claims that she requires vacant possession of the rental unit for the purpose of residential occupation by the Landlord herself.
14. The Landlord's Legal Representative explained how the Landlord's first attempt to serve the Tenant with an N12 notice in September 2021 was withdrawn when she hired the legal representative to assist her with correctly serving an N12 notice and then filing an application with the LTB. The Landlord's Legal Representative submitted that the one month compensation of \$550.00 was paid to the Tenant in November 2021 (as a waiving of rent) which is reflected in the L1 application and the L1 update sheet.
15. In support of the Landlord's affidavit submitted with the L2 application, the Landlord testified how she currently lives in another owned home while she maintains the rental unit as a rental property. The Landlord testified that she works for a minimum paying job and wants to retire, but cannot afford to retire while keeping the home she now lives in along with the rental unit. She confirmed that once she is able to move into the rental unit for at least one year (and more), that she will place her current home up for sale. The Landlord explained that due to LTB delays, she does not want to sell her current home until she can secure and move into the rental unit. The reason is she fears that she will be left homeless because the LTB process is very slow and continues to experience delays.

16. Based on the Landlord's submissions, I find that the Landlord in good faith requires possession of the rental unit for the purpose of her own residential occupation for a period of at least one year. I also find that the requisite one month compensation that is set out under subsections 48.1 and 55.1 of the Act has been paid by the Landlord to the Tenant by virtue of the November 2021 rent being waived. Further, I find that the requisite affidavit/declaration required under subsection 72(1) of the Act has been met by the Landlord.
17. In respect of circumstances, the Landlord submitted that the Tenant has three of her four children (ages 10, 11, 14 and 16) living with the Tenant in the rental unit, and that the Tenant's main income comes from Ontario Works and Ontario child benefits.
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 not be unfair to postpone the eviction under the L2 application until January 31, 2023 pursuant to subsection 83(1)(b) of the Act.
19. To be clear, the termination to be ordered under the L2 application will terminate the tenancy in a final way on January 31, 2023, and this means that if the Tenant is able to pay off entirely and void the L1 order for arrears to continue the tenancy, the tenancy will only be able to continue up to January 31, 2023.

**It is ordered that:**

L1 Application

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this L1 portion of the order.
2. **The Tenant may void this part of the overall order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$786.00 if the payment is made on or before November 21, 2022. See Schedule 1-part A 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 21, 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 part of the overall order the Tenant must move out of the rental unit on or before November 21, 2022.**
5. If the Tenant does not void the L1 portion of the order, the Tenant shall pay to the Landlord \$272.16. This amount includes rent arrears owing up to the date of the hearing (November 2, 2022) and the cost of filing the application. See Schedule 1-part B for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$18.08 per day for the use of the unit starting November 3, 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 21, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 22, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 21, 2022, then starting November 22, 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 22, 2022.

L2 Application

10. Even if the Tenant voids the L1 application portion of the order above, the tenancy between the Landlord and the Tenant is terminated in a final way (non-remedial), as of January 31, 2023.
11. The Tenant must move out of the rental unit on or before January 31, 2023.
12. If the unit is not vacated on or before January 31, 2023, then starting February 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
13. 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 February 1, 2023.
14. If the unit is not vacated on or before January 31, 2023, the Tenant shall also pay to the Landlords \$18.08 per day for compensation for the use of the unit starting February 1, 2023 to the date the Tenant moves out of the unit.

**November 10, 2022**  
**Date Issued**

Alex Brkic  
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 August 1, 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 21, 2022**

Rent Owing To November 30, 2022	\$7,200.00
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	- \$6,600.00
<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>\$786.00</b>

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

Rent Owing To Hearing Date (November 2/22)	\$6,686.16
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	- \$6,600.00
<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>\$272.16</b>
Plus daily compensation owing for each day of occupation starting November 3, 2022	\$18.08 (per day)