



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Ismail v Noman, 2022 ONLTB 11184

**Date:** 2022-11-03

**File Number:** LTB-L-021479-22

**In the matter of:** UPPER, 5553 MEADOWCREST AVE  
MISSISSAUGA ON L5M0V1

**Between:** Ahad Ismail, Chaudhry Muhammad Ismail Landlord

**And**

Muhammad Aman Saigal, Saira Noman Tenant

Ahad Ismail, Chaudhry Muhammad Ismail (the 'Landlord') applied for an order to terminate the tenancy and evict Muhammad Aman Saigal, Saira Noman (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 Chaudhry Muhammad Ismail (CI), the Landlord's representative L. Barder, and the Tenants' representative C. Anwar attended the hearing.

### **Determinations:**

1. As a preliminary matter, the Tenants' representative stated the Tenants were not served with the Form N4 dated March 23, 2022, explaining "it was never brought" to him from his clients. The Landlords assert there was proper service, with the Landlords' representative producing a Canada post tracking number for March 23 showing a package delivered on March 25, as well as pictures of the N4, cover letter and envelope prior to sending. After hearing the submission from both sides on this issue, I find that proper service of the Form N4 was made upon the Tenants.
2. The Landlords served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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.
3. As of the hearing date, the Tenants were still in possession of the rental unit.
4. The lawful rent is \$2,800.00. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$92.05. This amount is calculated as follows: \$2,800.00 x 12, divided by 365 days.
6. The Tenants have not made any payments since the application was filed.

7. The rent arrears owing to October 31, 2022 are now in excess of the monetary jurisdiction of the Board, being \$39,200.00. The Landlords consent to the jurisdiction of the Board in this matter. The Tenants did not dispute that this rent was unpaid.
8. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlords collected a rent deposit of \$2,800.00 from the Tenants and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.

### Section 83

10. Section 83 requires that I consider all the circumstances, including the Tenants' and the Landlords' situations to determine if it would be appropriate to grant section 83 relief from eviction.
11. There are substantial arrears owing and the Landlords have reached out to the Tenants on numerous occasions to negotiate a repayment plan, without success. There has been no rent paid over a period of several months, and the Landlords have suffered financially as a result.
12. The tenancy commenced in April 2021 and there are no children residing in the rental unit. Although the Tenants' representative sought a repayment plan at the hearing whereby the Tenants would pay 3 times the monthly rent, no documentary proof was rendered to show the Tenants can make such payments. Moreover, given the long history of no rent being paid and in the absence of a satisfactory explanation as to why there has been no payments for more than one year, I do not find it likely the Tenants will comply with such a plan. The Tenants did not serve or file any section 82 claims in advance of the hearing. Although the Tenants' representative briefly raised issues of car damage, vandalism, cameras on the property, the Tenants were not present to give direct evidence in respect of these issues and I do not find the Landlords are in serious breach of their obligations under the lease agreement or the Act.
13. I have considered all of the disclosed circumstances in accordance with subsection 83 of the *Residential Tenancies Act, 2006* (RTA), 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.

### It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlords or to the LTB in trust:**
  - \$42,186.00 if the payment is made on or before November 14, 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 November 14, 2022 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants 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 November 14, 2022**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$34,982.65. 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 Landlords owe on the rent deposit are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
6. If the unit is not vacated on or before November 14, 2022, then starting November 15, 2022, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after November 15, 2022.

**November 3, 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 May 15, 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 14, 2022**

Rent Owing To November 30, 2022	\$42,000.00
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	- \$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>\$42,186.00</b>

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

Rent Owing To Hearing Date	\$37,596.65
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	- \$2,800.00
<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>\$34,982.65</b>

