



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Tambur v Picard, 2022 ONLTB 10381

**Date:** 2022-11-01

**File Number:** LTB-L-003313-21

**In the matter of:** 3-38 Louisa Street  
Kitchener, ON N2H 5L8

**Between:** Ann Tambur Landlord

**And**

Ben Picard Tenants  
Rachel Wehipeihana

Ann Tambur (the 'Landlord') applied for an order to terminate the tenancy and evict Ben Picard and Rachel Wehipeihana (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

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

The Landlord's Legal Representative and the Tenants attended the hearing.

**Determinations:**

1. The Landlord 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.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$1,000.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$32.88. This amount is calculated as follows: \$1,000.00 x 12, divided by 365 days.
5. The Tenants have paid \$5,000.00 to the Landlord since the application was filed.
6. The rent arrears owing to September 30, 2022 are \$6,000.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,000.00 from the Tenants 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.

9. Interest on the rent deposit, in the amount of \$17.98 is owing to the Tenants for the period from April 1, 2021 to September 29, 2022.
10. As outlined within the interim order that was issued on July 29, 2022, the previous Member who heard the Tenant's preliminary motion determined that the tenancy is a joint tenancy and not a tenancy in common.
11. The Tenants dispute the amount owing and testified that they had paid additional rent to the unit's Superintendent. The Tenants testified that the Superintendent is attempting to sabotage the tenancy by allegedly stealing items from the Tenant's unit including their laptop that contained all of the evidence the Tenants intended to raise at this hearing. They further allege that the Superintendent failed to forward their rent payment of \$500.00 to the Landlord.
12. The Tenants testified that they called the police about these issues and that a police report was created but never followed up on as the evidence was lacking. The police report was never entered into evidence.
13. The Tenants also testified that they should receive a reduction in rent as the Superintendent had rented out another room in the unit 4 times in one month. The Tenant's never submitted any evidence to the Landlord or to the Board in advance of the hearing to raise issues under s. 82 of the *Residential Tenancies Act, 2006* (the 'Act').
14. The Tenants proposed paying an additional \$150.00 a month on top of their monthly rent in repay the arrears. They also testified that they could reach out the rent bank to get a portion of the arrears paid however, the Tenants in cross-examination agreed that she did not want to go through the application process if she was likely going to get evicted anyhow.
15. On a balance of probabilities, I am not satisfied that the evidence provided by the Tenants including their income, would support a reasonable payment plan in order to support the tenancy. Further, on a balance of probabilities, I am not satisfied that the Tenants were unable to properly prepare themselves for the hearing. The last hearing date was June 23, 2022 and the Tenants had sufficient time to file their information with the Board in order to properly raise their issues. Further, I find on a balance of probabilities that the issues raised by the Tenants regarding their alleged issues do not warrant either denying or significantly delaying the eviction in accordance with s. 83 of the Act.
16. That said, the Tenants have outlined that they both have health issues, and the Tenants appear to not have exhausted all of their avenues of support, including the local rent bank. The Tenants will be given 60 days to either void the order or to find a new unit.
17. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would not be unfair to postpone the eviction until December 31, 2022 pursuant to subsection 83(1)(b) of the Act.

**It is ordered that:**

18. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.

**19. The Tenants may void this order and continue the tenancy by paying to the Landlord:**

- 1. \$8,186.00 if the payment is made on or before November 30, 2022. See Schedule 1 for the calculation of the amount owing.

**OR**

- 2. \$9,186.00 if the payment is made on or before December 31, 2022. See Schedule 1 for the calculation of the amount owing.

20. 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 31, 2022 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.

**21. 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 31, 2022.**

22. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$5,121.54. 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 Tenants. See Schedule 1 for the calculation of the amount owing.

23. The Tenants shall also pay the Landlord compensation of \$32.88 per day for the use of the unit starting September 30, 2022 until the date the Tenants move out of the unit.

24. If the Tenants do not pay the Landlord the full amount owing on or before November 12, 2022, the Tenants will start to owe interest. This will be simple interest calculated from November 13, 2022 at 4.00% annually on the balance outstanding.

25. If the unit is not vacated on or before December 31, 2022, then starting January 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

26. 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 January 1, 2023.

**November 1, 2022**

**Date Issued**

\_\_\_\_\_  
Jagger Benham

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 July 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.

**Schedule 1  
SUMMARY OF CALCULATIONS**

**A. Amount the Tenants 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	\$13,000.00
Application Filing Fee	\$186.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$5,000.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$8,186.00</b>

**B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before December 31, 2022**

Rent Owing To December 31, 2022	\$14,000.00
Application Filing Fee	\$186.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$5,000.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$9,186.00</b>

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

Rent Owing To Hearing Date	\$10,953.52
Application Filing Fee	\$186.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$5,000.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,000.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$17.98
<b>Total amount owing to the Landlord</b>	<b>\$5,121.54</b>
Plus daily compensation owing for each day of occupation starting September 30, 2022	\$32.88 (per day)

