



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Darmar Investments 1015176 Ontario Inc. v Davidson, 2022 ONLTB 9839

**Date:** 2022-11-01

**File Number:** LTB-L-047474-22

**In the matter of:** 1, 40 Queen Street South  
Tilbury Ontario N0P2L0

**Between:** Darmar Investments - Landlords  
1015176 Ontario Inc.  
Mark Goodreau

**And**

Chris Davidson Tenant

Darmar Investments 1015176 Ontario Inc. and Mark Goodreau (the 'Landlords') applied for an order to terminate the tenancy and evict Chris Davidson (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 12, 2022. The Landlord and the Tenant attended the hearing.

**Determinations:**

1. The Landlords served the Tenant with a valid Notice to End the 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 \$803.00. It is due on the 1st day of each month.
4. Based on the monthly rent, the daily rent/compensation is \$26.40. This amount is calculated as follows: \$803.00 x 12, divided by 365 days.
5. Both parties agreed that the Tenant has paid \$5,850.00 to the Landlord since the application was filed.
6. Both parties agreed that the rent arrears owing to October 31, 2022 are \$1,377.00.
7. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$714.92 from the Tenant 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 \$64.20 is owing to the Tenant for the period from May 20, 2016 to October 12, 2022.

### Tenancy Issues

10. At the hearing, the Tenant raised an allegation of a loss of unit hydro and bullying from the Landlord under s. 82 of the *Residential Tenancies Act, 2006* (the "Act"). The Tenant testified that he did not disclose to the Landlord or the Board, before the hearing, that he would raise these issues at the hearing. The Tenant stated that he was not aware that he had to disclose these issues in advance of the hearing.
11. On the basis of the evidence provided, I find that the Tenant did not provide the Board and the Landlord with any advance notice that he would raise specific tenancy issues at the hearing, nor did the Tenant provide the Board with a satisfactory explanation why he could not comply with the seven-day notification requirement. I therefore will not consider the tenancy issues raised by the Tenant - pursuant to s. 82(1) and s. 82(2) of the Act and in accordance with the Board's Rules of Procedure 19.4 and 19.5. The Tenant may apply to the Board with tenant applications regarding his tenancy issues.

### Refusal of Eviction

12. Although the Tenant was unable to raise tenancy issues pursuant to s. 82 of the Act, I considered whether the Tenant's most serious tenancy issue resulted in the Landlord's serious breach of his responsibilities under the Act, and thus would require the Board to refuse to grant the Landlord's application to terminate the tenancy, pursuant to s. 83(3)(a) of the Act.
13. The Tenant testified that his most serious tenancy issue was that there was no hydro in the unit from June 27, 2022 to June 30, 2022 and this resulted in a loss of \$1000.00 worth of food in his refrigerator as well as a safety concern for his children who could not bear the heat in the unit without air-conditioning. The Tenant testified further that he believed that the Landlord shut-off the hydro himself to bully and intimidate the Tenant. The Tenant stated that he advised the Landlord about the loss of hydro; however, the Tenant could not recall when and how he advised the Landlord.
14. The Landlord testified that the Tenant never advised him about the loss of hydro, and that it was a member of the Children's Aid Society, who was visiting the Tenant on June 30, 2022, who advised him of the loss of hydro. The Landlord testified further that he called an electrician from Simpson Electric, and both he and the electrician attended the unit on June 30, 2022, and restored electricity to the unit that day. The Landlord stated that the cause of the outage was a faulty main breaker, and he asserted further that he did not shut off the Tenant's hydro intentionally on June 27, 2022.
15. The Tenant did not establish through sufficient evidence that the unit's loss of hydro from June 27, 2022 to June 30, 2022 was a serious breach of the Landlord's responsibilities under this Act, and more specifically, that the Landlord intentionally shut-off the hydro and failed to respond adequately to correct the problem when notified. I find the Landlord's testimony more plausible and compelling than the Tenant's in this matter. I am satisfied

that the Landlord did not shut off the hydro to the unit on June 27, 2020, that the Tenant did not advise the Landlord of the hydro outage, and when the Landlord was notified of the outage by a third-party, he responded reasonably and appropriately to rectify the problem the same day. I am satisfied that the hydro outage was caused by a faulty main breaker. I therefore find that there is no serious breach of the Landlord's responsibilities regarding the unit's loss of hydro from June 27, 2022 to June 30, 2022, and accordingly, there are no circumstances to refuse the eviction pursuant to s. 83(3)(a) of the Act.

### Relief from Eviction

16. The Landlord testified that on June 24, 2022 he emailed the Tenant and met with the Tenant in person in an effort to establish a repayment program for the rent arrears. The Landlord stated that the Tenant did not commit to a repayment plan.
17. The Tenant testified that he was unable to pay the rent consistently this year, or commit to any repayment plan, because his financial difficulties have worsened as a result of his poor mental health and bouts of depression. The Tenant testified further that he was the victim of two domestic assaults in December 2021, and struggles both financially and emotionally to raise his two children. The Tenant testified that his monthly income from Ontario Works is \$1,250.00, and that all of this money is used for food and living expenses – not rent. The Tenant noted that he has applied for the Ontario Disability Support Program (ODSP) to supplement his existing income.
18. 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 November 30, 2022 pursuant to subsection 83(1)(b) of the Act. I am satisfied that the Tenant has made substantial rent payments since the L1 application was filed, and although the Tenant's current monthly income is insufficient to cover all of his living expenses, the potential receipt of ODSP funds may permit the Tenant to preserve his tenancy. Given the Tenant's financial and health struggles, and the prospect of increased income through ODSP, I find that it is reasonable and appropriate to postpone the termination of the Tenant's tenancy a few weeks to provide the Tenant with additional time to pay his rent arrears. I further find that this short postponement would not be unduly prejudicial to the Landlord.

### 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:**
  - \$2,381.00 if the payment is made on or before November 30, 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 30, 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 30, 2022.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$312.68. 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 Tenant. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$26.40 per day for the use of the unit starting October 13, 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 30, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 1, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 30, 2022, then starting December 1, 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 1, 2022.

**November 1, 2022**  
**Date Issued**

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Frank Ebner  
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 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 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	\$8,030.00
Application Filing Fee	\$201.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$5,850.00
<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>\$2,381.00</b>

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

Rent Owing To Hearing Date	\$6,740.80
Application Filing Fee	\$201.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$5,850.00
<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	- \$714.92
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$64.20
<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	- \$0
<b>Total amount owing to the Landlord</b>	<b>\$312.68</b>
Plus daily compensation owing for each day of occupation starting October 13, 2022	\$26.40 (per day)