



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

**Citation:** H&R Property Management v James, 2022 ONLTB 10578

**Date:** 2022-10-31

**File Number:** LTB-L-019301-22

**In the matter of:** 1102, 1 ANTRIM CRES  
SCARBOROUGH ON M1P4P2

**Between:** H&R Property Management Landlord

**And**

Davina Elizabeth Ybanez James Tenant

H&R Property Management (the 'Landlord') applied for an order to terminate the tenancy and evict Davina Elizabeth Ybanez James (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 24, 2022.

The Landlord's Representative Sam Ursino and the Tenant attended the hearing.

### **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 \$1,604.02. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$52.73. This amount is calculated as follows: \$1,604.02 x 12, divided by 365 days.
5. The Tenant has paid \$5.00 to the Landlord since the application was filed.
6. The rent arrears owing to October 31, 2022 are \$13,768.04.
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 \$1,585.00 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. Interest on the rent deposit in the amount of \$15.48 is owing for the period of August 6, 2021 to October 24, 2022.

Relief from Eviction

9. The Tenant requested relief from eviction in the form of a repayment plan. The Tenant suggested that she pay \$500.00 towards the arrears each month. On this schedule it would take the Tenant over two years to repay the outstanding arrears. The Landlord is opposed to a repayment plan.
10. I do not find that imposing a repayment plan would be fair in the circumstances because of how long it would take the arrears to be paid off. Additionally, the Tenant has only made one \$5.00 payment towards the rent since the application was filed and therefore, I am not satisfied that she would abide by the conditions of a repayment plan.
11. The Tenant also request relief from eviction in the form of a delayed eviction by 6 months. The Tenant testified that she contacted a rent bank to see if she can get assistance. The Tenant also testified that she has a young child who goes to daycare in the area. The Landlord is opposed to any delay of the eviction.
12. 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 until November 25, 2022 pursuant to subsection 83(1)(b) of the Act. This is because a slight postponement will give the Tenant time to work with a rent bank and see if they can offer her any assistance. Alternatively, it will also give her time to find new accommodations for her and her child. I have chosen not to postpone this eviction significantly because of the large amount of outstanding arrears.

**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:**
  - \$13,954.04 if the payment is made on or before October 31, 2022. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$15,553.06 if the payment is made on or before November 25, 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 25, 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 25, 2022.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$12,010.06. 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 \$52.73 per day for the use of the unit starting October 25, 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 11, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 12, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 25, 2022, then starting November 26, 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 26, 2022.

**October 31, 2022**

**Date Issued**

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Amanda Kovats

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 26, 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 October 31, 2022**

Rent Owing To October 31, 2022	\$13,768.04.
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	- \$5.00
<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>\$13,954.04</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before November 25, 2022**

Rent Owing To November 30, 2022	\$15,372.06
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	- \$5.00
<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>\$15,553.06</b>

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

Rent Owing To Hearing Date	\$13,429.54
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	- \$5.00
<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	- \$1,585.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$15.48
<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>\$12,010.06</b>
Plus daily compensation owing for each day of occupation starting October 25, 2022	\$52.73 (per day)