



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** IMH POOL XVII LP v FORESTIN, 2022 ONLTB 10057

**Date:** 2022-10-25

**File Number:** LTB-L-006464-22-RV

**In the matter of:** 1407, 1340 DANFORTH RD  
SCARBOROUGH ON M1J1G2

**Between:** IMH POOL XVII LP Landlord

**And**

Forestin, Melianise and Noel, Joshua Desir Tenants

### Review Order

IMH POOL XVII LP (the 'Landlord') applied for an order to terminate the tenancy and evict Forestin, Melianise Noel, Joshua Desir (the 'Tenants') because the Tenants did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-006464-22 issued on August 23, 2022.

On September 2, 2022 the Tenant, Melianise Forestin requested a review of the order and that the order be stayed until the request to review the order is resolved. The Tenant claims that she was not reasonably able to participate because she could not read the Notice of Hearing.

On September 6, 2022, interim order LTB-L-006464-22-RV-IN was issued, directing the matter to proceed to a review hearing.

This request to review was heard by videoconference in hearing room VC102 on September 28, 2022. The Tenant, Melianise Forestin and the Tenant's legal representative, Renne Griffin attended the hearing. The other Tenant, Joshua Desir Noel has vacated the rental unit. The Landlord's legal representative, Halima Channiwala attended the hearing.

An Antonio Valeus attended the hearing and provided interpretation services in the Creole language for the Tenant, Melianise Forestin.

### Determinations:

#### Request to Review

1. I accept the Tenant's testimony that she received the Notice of Hearing prior to the scheduled hearing on August 16, 2022 but that she was unable to read it because her first language is Creole and she is unable to read documents in English. She stated her cousin Mark Pierre ('Mr. Pierre') usually reads the documents she receives in the mail to her. She

stated he was out of town when she first received the Notice of Hearing and he read the document to her when he returned which was two days after the date of the scheduled hearing. She stated Mr. Pierre read the order to her which was issued following the hearing but she could not recall the date he read it to her

2. Mr. Pierre stated he was away for approximately 6 weeks from early August until September 17, 2022. He stated he was in communication with the Tenant by telephone during this time and she advised him she had received some mail but was not aware that it was from the Landlord and Tenant Board. Mr. Pierre stated that he read the Notice of Hearing to her on September 17, 2022. He stated he is the only person available to assist her with reading English documents as her son is away in the United States training for a new job.
3. The Tenant's legal representative, Renee Griffin ('Ms. Griffin') filed the Request for Review on September 6, 2022. It was put to Mr. Pierre that the Request for Review was filed prior to the date in which Mr. Pierre stated he read the Notice of Hearing and the order to the Tenant. Mr. Pierre stated he is not good with remembering dates and that he may have confused the dates. He stated that he had been in contact with Ms. Griffin for some time prior to this review hearing.
4. I accept Mr. Pierre's explanation is reasonable. I also accept that the Tenant would have required assistance with obtaining legal advice due to her limited English speaking skills. I accept that it was Mr. Pierre that assisted the Tenant with arranging for legal advice following the receipt of the Board's order issued on August 23, 2022 which resulted in Ms. Griffin filing the Request for Review on September 6, 2022.
5. The Landlord's request to review is granted. As a result, order LTB-L-006464-22 issued on August 23, 2022 was cancelled, and a new hearing was held to consider the merits of the original application

Merits of the original L1 application:

6. 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.
7. As of the hearing date, the Tenant was still in possession of the rental unit.
8. The lawful rent is \$1,171.84 as of May 1, 2022. It is due on the 1st day of each month.
9. Based on the Monthly rent, the daily rent/compensation is \$38.53. This amount is calculated as follows: \$1,171.84 x 12, divided by 365 days.
10. The Tenant has paid \$6,300.00 to the Landlord since the application was filed.
11. The rent arrears owing to September 30, 2022 are \$5,673.73.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

13. The Landlord collected a rent deposit of \$1,157.95 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.
14. Interest on the rent deposit, in the amount of \$10.32 is owing to the Tenant for the period from January 1, 2022 to September 28, 2022.
15. The Landlord states when the N4 notice was served on the Tenant, a telephone number was also provided to the Tenant and the Tenant was notified that she could contact the Landlord to discuss setting up a payment plan. The Landlord states there was no response received from the Tenant and there were no further attempts made by the Landlord to negotiate a repayment of the arrears.
16. The Tenant does not dispute the arrears amount owing. She stated she is 63 years old and has been residing in the rental unit since 2009. Her only source of income is social assistance and she stated she receives \$733.00 per month.

#### Section 83 relief

17. The Tenant states that her son Wesley has a job and is going to assist her with the repayment of the arrears and the monthly rent. She stated she does not know the amount he will be able to provide for assistance. The Tenant states she wants to enter into a payment plan for the rent arrears.
18. Mr. Pierre states that the Tenant's son Wesley started training for a new job in the United States and that he currently receives \$400.00 per week while in training to live on. Mr. Pierre states that Wesley's training will not be completed for two more months. Mr. Pierre stated that Wesley can pay \$300.00 per month towards the rent arrears and the shortfall towards the monthly rent commencing October 1, 2022. Mr. Pierre states that he has also been corresponding with the EPIC ('Eviction Prevention in the Community') program to obtain financial assistance for the Tenant regarding her rent arrears and ongoing monthly rent. He states the EPIC program is awaiting receipt of a paystub from Wesley before making a determination. Mr. Pierre did not provide any detail regarding why the paystub had not yet been provided. Mr. Pierre states the Tenant will not have anywhere to go if she is evicted and that she will end up living on the street.
19. The Landlord did not consent to a payment plan and states it is not affordable. Based on the information before me, I find that a payment plan is not viable. This is because the Tenant would be relying on financial assistance from her son Wesley, but her son is still undergoing training for a new job for approximately another two months. Her son currently earns \$400.00 per week which he relies upon to live. The amount which he will be earning once the training is completed was not provided. I accept that the Tenant has contacted the EPIC program to obtain assistance but there was no confirmation provided at the hearing that she will be accepted to receive financial assistance through this agency.
20. The Landlord requests a standard order as several months have passed since the Landlord served the Tenant with the N4 notice. The Tenant requests if the Board grants the Landlord's request for eviction that the eviction be postponed for 60 days to allow the Tenant to try and secure financial assistance through her social worker and the EPIC program.

21. The Landlord attempted to negotiate a repayment plan without success with the Tenant when the Landlord provided the Tenant with the information to contact the Landlord to discuss a repayment of the arrears when the Landlord served the N4 notice. As a result, I find that the Landlord fulfilled his duties to attempt resolution of the application during the COVID-19 pandemic pursuant to subsection 83(6) of the Act.
22. 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 December 9, 2022 pursuant to subsection 83(1)(b) of the Act. I accept the Tenant has been residing in the rental unit since 2009 and that if evicted, she would have nowhere to go and may end up living on the street. I also accept that the Tenant has limited English speaking skills. I have considered the prejudice to both sides and I find that postponing the eviction to allow the Tenant the opportunity to secure financial resources to try and preserve the tenancy, mitigates the prejudice to the Tenant and does not produce significant prejudice to the Landlord.

**It is ordered that:**

1. The request to review order LTB-L-006464-22 issued on August 23, 2022 is granted.
2. Order LTB-L-006464-22 issued on August 23, 2022 is cancelled and replaced by the following:
3. The tenancy between the Landlord and the Tenants is terminated unless the Tenants voids this order.
4. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$7,031.57 if the payment is made on or before October 31, 2022. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$8,203.41 if the payment is made on or before November 30, 2022. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$9,375.25 if the payment is made on or before December 9, 2022. See Schedule 1 for the calculation of the amount owing.
5. 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 December 9, 2022 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
6. **If the Tenants do not pay the amount required to void this order the Tenant must move out of the rental unit on or before December 9, 2022.**

7. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$4,598.46. 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.
8. The Tenant shall also pay the Landlord compensation of \$38.53 per day for the use of the unit starting September 29, 2022 until the date the Tenant moves out of the unit.
9. If the Tenants do not pay the Landlord the full amount owing on or before December 9, 2022, the Tenants will start to owe interest. This will be simple interest calculated from December 10, 2022 at 4.00% annually on the balance outstanding.
10. If the unit is not vacated on or before December 9, 2022, then starting December 10, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
11. 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 10, 2022.

**October 25, 2022**  
**Date Issued**

Kimberly Parish  
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 10, 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	\$13,145.57
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	- \$6,300.00
<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>\$7,031.57</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 30, 2022**

Rent Owing To November 30, 2022	\$14,317.41
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	- \$6,300.00
<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	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$8,203.41</b>

**C. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 9, 2022**

Rent Owing To December 31, 2022	\$15,489.25
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	- \$6,300.00
<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	- \$0.00

<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$9,375.25</b>
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**D. Amount the Tenant must pay if the tenancy is terminated**

Rent Owing To Hearing Date	\$11,880.73
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	- \$6,300.00
<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	- \$1,157.95
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$10.32
<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>\$4,598.46</b>
Plus daily compensation owing for each day of occupation starting September 29, 2022	\$38.53 (per day)

2022 ONL TB 10057 (CanLI)