



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Carcani v Oostveen, 2023 ONLTB 18521

**Date:** 2023-02-01

**File Number:** LTB-L-047127-22

**In the matter of:** 4 EAST HAMPTON RD  
ST CATHARINES ON L2T3E1

**Between:** Ali Ramadan  
Ornela Carcani

**And**

Aaron James Oostveen  
Chrystal Lynn Mcclelland

I hereby certify this is a  
true copy of an Order dated

**FEB 01, 2023**

Landlord and Tenant Board

Landlords

Tenants

Ali Ramadan and Ornela Carcani (the 'Landlords') applied for an order to terminate the tenancy and evict Aaron James Oostveen and Chrystal Lynn Mcclelland (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on January 31, 2023. The Landlords, their legal representative, Masoud Tchavoshi, and the Tenants attended the hearing.

### Determinations:

1. 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.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$3,000.00. It is due on the 1<sup>st</sup> day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$98.63. This amount is calculated as follows: \$3,000.00 x 12, divided by 365 days.
5. The Tenants have paid \$1,500.00 to the Landlords since the application was filed on August 19, 2022.
6. The rent arrears owing to January 31, 2023 are \$23,600.00.
7. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlords collected a rent deposit of \$3,000.00 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.

9. Interest on the rent deposit, in the amount of \$80.18 is owing to the Tenants for the period from July 1, 2021 to January 31, 2023.
10. The Landlords were granted an expedited hearing on the basis that the issue with the Tenants not paying rent has caused financial distress and mental health issues for them. They testified that they have not been able to afford food for their family because of the lack of payments from the Tenants and they have used up their savings and have even gone to lengths to borrow money from friends and family to make ends meet to the point that they have exhausted their financial resources. The Landlords are both out of work as a result of stress leave and mental health issues. The Landlords have tried to negotiate payment terms with the Tenants, but the Tenants have not followed through on their promises to the Landlord and are not even making the monthly rent payments, let alone any money towards the rent arrears.
11. The Tenants have also had difficulty with their finances and have had issues with employment income being reduced. The Tenants originally had additional financial support from their mother until they had a falling out and their mother left. This resulted in less money for the Tenants to be able to pay their rent. The Tenants had conversations with the Landlord regarding having a sublet into the rental unit to provide additional cash flow, but the parties were never able to come to any resolution regarding the additional person. The Tenants further indicated that they had a baby in the summer and that they required extensive medical attention which put additional strain on their resources. One of the Tenants receives ODSP and the other has just started getting an increased wage since December of 2022. Combined, the Tenants income is currently about \$6,900.00 which includes employment income, ODSP and the child tax credit. The Tenants anticipate an additional amount for child tax as soon as they straighten out an issue with the paperwork for their 5 month old baby. The Tenants proposed a payment plan of \$1,500.00 that could be offered by e-transfer to the Landlords during the hearing and then \$500.00 every Friday plus an additional \$1,500.00 on the first day of each month going forward until the arrears were paid.
12. The Landlords were opposed to the payment proposal on the basis that they feel they have suffered enough with the arrears and they just want the Tenants to move out of the property. They felt that a payment plan would be cruel on the basis that the Tenants have not honoured payment proposals in the past and it would put additional financial strain on them when the Tenants faulted again. In addition, the Landlord testified that when they would send the Tenants a text asking for the rent money, the response they received was, "LOL".
13. During the hearing the Tenants payment proposal was explored in detail which ideally would have provided the Landlords with immediate cash and an additional \$500.00 by February 3<sup>rd</sup>. With the amount of \$5,000.00 being paid by March 1, 2023. The Landlords outright objected to the consideration of a payment plan and insisted that a standard 11 day order would be best so that they could manage the vacancy, clean up the unit and then screen to get Tenants in the unit that would pay. They are fed up, financially broke and emotionally exhausted.
14. While I sympathize with the Landlords and the Tenants based on both of their circumstances, after taking submissions from both parties, I do not find a payment plan appropriate under the circumstances.

15. Firstly, I am mindful of the quantum of rent arrears and the lack of good payment history by the Tenants. Secondly, I am not satisfied that the Tenants could not have made good faith payments to the Landlord when their monthly income has been at the least, \$5,300.00. The Tenants ODSP amount and child tax has not changed and the other Tenants income has not dropped below \$2,000.00. Also, the employment income as of December 2022 increased by \$1,600.00 according to the evidence at the hearing and the Tenants have still not paid anything to the Landlord. The Tenants have paid half a month's rent in 6 months. The Landlords should not be penalized for the Tenants choosing to pay other bills rather than for their rent. For these reasons I do not believe the tenancy is a viable one.
16. Having regard to all of the circumstances, I find it appropriate to allow additional time for the Tenants to find alternative accommodations if they are unable to pay the Landlords rather than the payment plan proposed by the Tenants.
17. 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 March 5, 2023 pursuant to subsection 83(1)(b) 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:**
  - \$26,786.00 if the payment is made on or before February 28, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$29,786.00 if the payment is made on or before March 5, 2023. 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 March 5, 2023 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 March 5, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$20,705.82. 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. The Tenants shall also pay the Landlords compensation of \$98.63 per day for the use of the unit starting February 1, 2023 until the date the Tenants move out of the unit.

7. If the Tenants do not pay the Landlords the full amount owing on or before March 5, 2023, the Tenants will start to owe interest. This will be simple interest calculated from February March 6, 2023 at 5.00% annually on the balance outstanding.
8. If the unit is not vacated on or before March 5, 2023, then starting March 6, 2023, the Landlords 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 March 6, 2023.

**February 1, 2023**  
**Date Issued**

  
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Terri van Huisstede  
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 September 6, 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.

\*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

**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 February 28, 2023**

Rent Owing To February 28, 2023	\$28,100.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlords since the application was filed	- \$1,500.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$26,786.00</b>

**B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before March 5, 2023**

Rent Owing To March 31, 2023	\$31,100.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlords since the application was filed	- \$1,500.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$29,786.00</b>

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

Rent Owing To Hearing Date	\$25,100.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlords since the application was filed	- \$1,500.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$3,000.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$80.18
<b>Total amount owing to the Landlords</b>	<b>\$20,705.82</b>
Plus daily compensation owing for each day of occupation starting February 1, 2023	\$98.63 (per day)