



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Calabrese v Huryn-stewart, 2024 ONLTB 57953

**Date:** 2024-08-08

**File Number:** LTB-L-084467-23

**In the matter of:** Lower Unit, 208 ZINA ST  
ORANGEVILLE ON L9W1G1

**Between:** Nicodemo Calabrese

**And**

Cherrise Huryn-stewart

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

**AUG 8, 2024**

Landlord and Tenant Board

Landlord

Tenant

Nicodemo Calabrese (the 'Landlord') applied for an order to terminate the tenancy and evict Cherrise Huryn-stewart (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on July 26, 2024.

The Landlord and their representative, Sarah Vaz, and the Tenant attended the hearing.

### Preliminary issue:

1. Pursuant to section 82 of the *Residential Tenancies Act, 2006* (the 'Act'), a Tenant is permitted to raise any issue that could be the subject of an application if the Tenant complies with disclosure requirements or provides an explanation satisfactory to the Board explaining why the Tenant could not comply. Section 82(2) requires a Tenant to give advance notice to the Landlord of the Tenant's intent to raise the issue at the hearing and this notice shall be in writing.
2. The Tenant submitted that she did not serve a list of section 82 issues on the Landlord because she was not aware it had to be directly served to the Landlord.
3. As such, I refused to hear evidence of the Tenant's section 82 issues at the hearing because the Tenant did not provide disclosure of the section 82 issues at least 7 days prior to the scheduled hearing which is required pursuant to the Board's Rule 19.1 and did not provide a reasonable explanation for failing to do so.
4. However, it should be noted that this does not in itself preclude the Tenant from filing an application with respect to these issues. She may wish to contact his local legal clinic to get advice in this regard.

### 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 \$2,200.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$72.33. This amount is calculated as follows:  $\$2,200.00 \times 12$ , divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to July 31, 2024, are \$24,200.00. The Tenant did not contest the amount owed.
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 \$2,200.00 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.
9. Interest on the rent deposit, in the amount of \$110.75 is owing to the Tenant for the period from July 22, 2022, to July 26, 2024.
10. The Tenant provided that she did not pay rent as there was on-going maintenance issues and harassment from the Landlord. She further submitted that she was laid off from work in January 2024 but since then she will be starting a new job on July 2024. She submitted she is looking to move out on September 30, 2024, as she has two children aged 6 and 4 years old and would like to secure schooling for them before moving out.
11. The Landlord opposed the termination date of September 30, 2024. Instead, they proposed September 1, 2024. The Landlord provided that he is a small Landlord and has recently had to sell his business to upkeep the home and has been facing financial hardship as a result of the Tenant's non-payment.
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 September 20, 2024, pursuant to subsection 83(1)(b) of the Act.

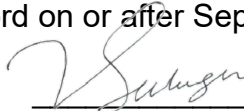
**It is ordered that:**

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:**
  - \$26,586.00 if the payment is made on or before August 31, 2024. See Schedule 1 for the calculation of the amount owing.

**OR**

- \$28,786.00 if the payment is made on or before September 20, 2024. 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 September 20, 2024 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 September 20, 2024**
  5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$21,755.83. 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 \$72.33 per day for the use of the unit starting July 27, 2024 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 September 20, 2024, the Tenant will start to owe interest. This will be simple interest calculated from September 21, 2024 at 7.00% annually on the balance outstanding.
  8. If the unit is not vacated on or before September 20, 2024, then starting September 21, 2024, 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 September 21, 2024.

**August 8, 2024**  
**Date Issued**

  
\_\_\_\_\_  
Vinuri Sivalingam  
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 March 21, 2025 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 August 31, 2024**

|                                                                                        |                    |
|----------------------------------------------------------------------------------------|--------------------|
| Rent Owing To August 31, 2024                                                          | \$26,400.00        |
| 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 | - \$0.00           |
| <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>\$26,586.00</b> |

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before September 20, 2024**

|                                                                     |                    |
|---------------------------------------------------------------------|--------------------|
| Rent Owing To September 30, 2024                                    | \$28,600.00        |
| Application Filing Fee                                              | \$186.00           |
| NSF Charges                                                         | \$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>\$28,786.00</b> |

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

|                                                                                        |                      |
|----------------------------------------------------------------------------------------|----------------------|
| Rent Owing To Hearing Date                                                             | \$23,880.58          |
| 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 | - \$0.00             |
| <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                                | - \$2,200.00         |
| <b>Less</b> the amount of the interest on the last month's rent deposit                | - \$110.75           |
| <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 amount owing to the Landlord</b>                                              | <b>\$21,755.83</b>   |
| Plus daily compensation owing for each day of occupation starting July 27, 2024        | \$72.33<br>(per day) |