



OCT 29, 2024

Landlord and Tenant Board

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

Citation: Nyerges v Beattie, 2024 ONLTB 79921

Date: 2024-10-29

File Number: LTB-L-057233-24

In the matter of: 80 CAUTHERS CRES
ALLISTON ON L9R0L2

Between: Tibor Nyerges Landlord

And

Chelsea Beattie Tenant
Juan Turcios

Tibor Nyerges (the 'Landlord') applied for an order to terminate the tenancy and evict Chelsea Beattie and Juan Turcios (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 16, 2024.

The Landlord's legal representative Babak Karimkhani, the Landlord 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 \$3,000.00. It is due on the 1st 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 Tenant has paid \$2,500.00 to the Landlord since the application was filed.
6. The rent arrears owing to October 31, 2024 are \$16,500.00.
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 and security deposits totalling \$6,000.00 from the Tenant and these deposits are still deemed to be held by the Landlord, despite the Landlord submitting that this amount was retained by the landlord's agent/ neighbour who assisted

in the execution of the tenancy agreement between the parties. 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 \$54.86 is owing to the Tenant for the period from January 24, 2024 to October 16, 2024.
10. The Landlord seeks a standard order for eviction submitting that the Tenant has demonstrated a pattern of non-payment of rent as related to previous tenancy agreements and for which arrears of rent are still outstanding per Board orders LTB-L-035893-22 and LTB-L-073484-23. That the only reason the Landlord became aware of the LTB-L-073484-23 order issued on January 23, 2024 was because ironically, the Landlord's representative was also representing the Landlord as pertaining to the Tenant's prior rental unit. Under that order, the Tenant was order to pay \$12,536.00 for arrears to end of January 2024, this amount has not been repaid.
11. The rental unit is the Landlord's primary residence, he and his family are currently residing outside of the country. The Tenant's non-payment of rent has posed vast financial impacts on the Landlord, inclusive of mortgage and line of credit defaults and inability to pay the taxes on the rental property.
12. The Tenant does not dispute the arrears as claimed. She submitted that she makes no excuses for the arrears as owed and that she has been dealing with a number of difficult issues in the recent past, specifically as pertaining to her breakdown of her relationship with her partner Juan, the second named Tenant.
13. The Tenant wishes to preserve the tenancy and presented a repayment plan of varying amounts on a go forward basis. The Landlord becoming aware of the prior orders is not open to entering into a repayment plan with the Tenant due to the fear that she will commence a new tenancy again and leave the Landlord with arrears that are in excess of the current day.
14. Alternatively, the Tenant requested six months of delay from eviction to seek alternative accommodations, accommodations that she submits are hard to find as she requires a basement unit to accommodate her brother who has suffered from a brain injury.
15. Current day, the monthly household income is approximately \$5,000.00, comprised of employment income, the Child Tax Benefit and support she receives from her brother. The Tenant testified that the total monthly household expenses are approximately \$3,765.00, which includes utilities, insurances, groceries, and fuel expense. This amount does not take into account any amounts that the Tenant will be obligated to repay under a proposal to creditors of approximately \$6,000.00 to \$7,000.00 as outstanding on the date of the hearing.
16. The Tenant has three children, aged 16, 14 and 8. In review of the reoccurring bills there was no consideration for any child or person care expenses, incidental costs, leisure or clothing expense that inevitably exist.

17. In closing the Landlord maintained their position of seeking a standard order submitting that the Landlord is not confident that any conditional order of repayment of rent if granted, would be complied with. That the Tenant has had three chances already and that based on her wages being garnished to repay arrears based on the prior Board orders, that there is no consideration for the preservation of this tenancy.

Relief from eviction

18. 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 30, 2024 pursuant to subsection 83(1)(b) of the Act.

19. In making my determination I considered the submissions of the parties, I note that while the amount of arrears are high, there are three children under that age of 16 years old residing in the rental property as well as an adult who may require specialized accommodations. While I appreciate that the Tenant has had some personal issues which have impacted her ability to pay rent, the current arrears of rent are high and there is no evidence before the Board that there are concrete financial changes impending that would allow for a preservation of tenancy on a conditional basis. The current household income may be sufficient to cover the ongoing rent, and perhaps monthly bills, leaving little for consideration towards repayment of the arrears. I also take into consideration that this is the third tenancy that the Tenant has entered into since 2022 and that there are still unpaid arrears of rent as stemming from those tenancies. By providing the extension to November 30, 2024, the Tenant may be afforded additional time to either void this order or find alternative housing. The Landlord is in possession of the last month's deposit, as such the extension of time should not pose additional prejudice to the Landlord.

20. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

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:**
 - \$16,686.00 if the payment is made on or before October 31, 2024. See Schedule 1 for the calculation of the amount owing.

OR

 - \$19,686.00 if the payment is made on or before November 30, 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 November 30, 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 November 30, 2024.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$9,209.22. 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 \$98.63 per day for the use of the unit starting October 17, 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 November 30, 2024, the Tenant will start to owe interest. This will be simple interest calculated from December 1, 2024 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 30, 2024, then starting December 1, 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 December 1, 2024.

October 29, 2024
Date Issued



Alicia Johnson
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, 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 October 31, 2024

Rent Owing To October 31, 2024	\$19,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,500.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$16,686.00

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, 2024

Rent Owing To November 30, 2024	\$22,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,500.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$19,686.00

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

Rent Owing To Hearing Date	\$17,578.08
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,500.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$6,000.00
Less the amount of the interest on the last month's rent deposit	- \$54.86
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00

Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$9,209.22
Plus daily compensation owing for each day of occupation starting October 17, 2024	\$98.63 (per day)