



## Order under Section 69 Residential Tenancies Act, 2006

File Number: LTB-L-048361-24

**In the matter of:** 560 ATLAS AVE  
Toronto ON M6C3R6

**Between:** Assunta (Suzan) Bianchi  
Giocondo (Jack) Bianchi

**And**

Sonny (aka Sonny Mitchell) Blair  
Elizabeth Mitchell

I hereby certify this is a  
true copy of an Order dated  
**NOV 26, 2024**  
Landlord and Tenant Board

Landlord

Tenant

### L1 Application

Assunta (Suzan) Bianchi and Giocondo (Jack) Bianchi (the 'Landlord') applied for an order to terminate the tenancy and evict Sonny (aka Sonny Mitchell) Blair and Elizabeth Mitchell (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

### L2 Application

Assunta (Suzan) Bianchi and Giocondo (Jack) Bianchi (the 'Landlord') applied for an order to terminate the tenancy and evict Sonny (aka Sonny Mitchell) Blair and Elizabeth Mitchell (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant, and
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

The Landlord also applied for an order requiring Sonny (aka Sonny Mitchell) Blair and Elizabeth Mitchell (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

The Landlord also applied for an order requiring Sonny (aka Sonny Mitchell) Blair and Elizabeth Mitchell (the 'Tenant') to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused

wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This combined L1/L2 application was heard by videoconference on November 7, 2024.

The Landlord's Legal Representative, Ze Hao Liu, the Landlord and the Tenant attended the hearing.

When the capitalized word "Landlord" is used in this order, it refers to all persons or companies identified as a Landlord at the top of the order. When the capitalized word "Tenant" is used in this order, it refers to all persons identified as a Tenant at the top of the order.

### **Determinations:**

#### L1 Application

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 \$2,500.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$82.19. This amount is calculated as follows:  $\$2,500.00 \times 12$ , divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The parties agreed that the rent arrears owing to November 30, 2024, are \$25,000.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.

#### L2 Application

9. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the Tenancy is terminated on or before November 29, 2024.
10. The Tenant was in possession of the rental unit on the date the application was filed.

#### N5 Notice of Termination

11. On May 26, 2024, the Landlord gave the Tenant a notice of termination (N5 Notice) alleging that the Tenant has substantially interfered with the Landlord's legal rights or interests by failing to pay the utility bills as required by the tenancy agreement and that the

Tenant caused undue damage to the rental unit or residential complex. The N5 notice contains the following details:

- Utilities (Enbridge, Toronto Hydro, Toronto Water and Waste) are owing from January 1, 2024, to May 2, 2024, in the amount of \$5,147.91.
- May 13, 2024: unauthorized modifications on garage door, garage window, hole burrowed through the north wall of the house to run more hydro to the garage.

12. The Tenant did not repair the damage, pay the Landlord the reasonable costs to repair the damage or make arrangements satisfactory to the Landlord within seven days after receiving the N5 notice nor did the Tenant pay the outstanding utilities (Enbridge, Toronto Hydro, Toronto Water and Waste). Therefore, I find that the Tenant did not void the N5 notice of termination in accordance with sections 62(3) and/or 64(3) of the *Residential Tenancies Act, 2006* (Act).
13. The Landlord testified and the Tenant did not dispute that the Tenant was responsible for payment of the utilities. The Tenant did not dispute the amount owing for unpaid utilities. The Landlord submitted into evidence copies of the Enbridge, Toronto Hydro and Toronto Water and Waste invoices for the rental unit showing an outstanding balance of \$5,827.93 as per the application.
14. Given the above, I find the Landlord has sufficiently established that the Tenant was responsible for paying the utilities under their agreement. By failing to pay the utilities as required by the terms of their agreement, I find that the Tenant has substantially interfered with the Landlord's lawful rights or interests.
15. In the N5 notice, the Landlord also claimed that the Tenant caused undue damage to the garage door and window and burrowed through the north wall of the house to run more hydro to the garage.
16. The Landlord testified and the Tenant did not dispute that the Tenant made modifications to the garage and ran electricity from the house to the garage without notice to the Landlord. The Tenant testified upon moving in the Landlord informed him that the rental unit was his home, and he could do whatever he liked to make it comfortable for himself. The Tenant submitted that he has products that are heat sensitive in the garage and he needed to run wiring for heat. The Tenant further submitted that he had the wiring done by a professional electrician and was assured that it was to code. The Tenant did not submit any evidence into the Board to corroborate his testimony.
17. Based on the evidence before me, I am satisfied that the Tenant, another occupant of the rental unit or a person whom the Tenant permitted in the residential complex willfully or negligently caused undue damage to the garage door and window and burrowed a hole through the wall of the house to run more hydro to the garage.

Compensation for undue damage and unpaid utilities

18. At the hearing, the Landlord's Legal Representative submitted that when they filed the application the utilities owing was \$5,827.93. The Landlord's representative submitted that as of the date of the hearing the total owing for unpaid utilities is \$8,324.53.

19. At the hearing, the Landlord requested to amend the L2 application filed with the Board.

20. Board Rules of Procedure: Rule 15 - Amending Applications

15.1 A request to amend an application before the hearing must be:

- a) in writing;
- b) served with the amended application to all other parties; and
- c) filed with LTB with the amended application and a completed Certificate of Service.

15.3 The request to amend will be decided at the hearing after considering:

- a) whether the amendment was requested as soon as the need for it was known;
- b) any prejudice a party may experience as a result of the amendment;
- c) whether the amendment is significant enough to warrant any delay that may be caused by the amendment;
- d) whether the amendment is necessary and was requested in good faith; and
- e) any other relevant factors.

15.4 The LTB may exercise its discretion to grant a request to amend made at the hearing if satisfied the amendment is appropriate, would not prejudice any party and is consistent with a fair and expeditious proceeding.

21. For the following reasons I am denying the Landlord's request to amend the L2 application for the increased amount of damage the Landlord is claiming.

22. The Landlord failed to adhere to Rule 15.1(b) and 15.1(c).

23. Further, the Landlord's original L2 application had damage claim of \$5,827.93, the amended L2 application is claiming \$8,324.53. I considered the Board's Rule 15.3(b) and the prejudice to the Tenant having not been informed of the increase in damage the Landlord was claiming. I am not satisfied that granting the application would not be prejudicial to the Tenant. Therefore, the Landlord's request to amend the L2 application is denied.

24. The Landlord has incurred reasonable out of pocket expenses of \$5,827.93 as a result of the Tenant's failure to pay the utilities. Therefore, I find that the Tenant is required to pay that amount to the Landlord.

25. With respect to the cost of repairing the damage caused by modifications to the garage door and electrical wiring, the Landlord has submitted a copy of a quotation totalling \$4,141.76 into evidence. This quotation includes replacing the door to the garage as the current one has been damaged by cutting the door and inserting a large vent, the window needs to be replaced as it was removed to insert another vent and the electrical wiring needs to be corrected to bring it to code. The amount claimed on the application for repairs is \$4,000.00. Therefore, I find that the Tenant is required to pay \$4,000.00 for the reasonable out-of-pocket costs the Landlord will incur to repair the undue damage to the garage and wiring as per the application.

Daily compensation, NSF charges, rent deposit

The Tenant was required to pay the Landlord \$11,917.55 in daily compensation for use and occupation of the rental unit for the period from June 16, 2024, to November 7, 2024. The amount owing for rent/daily compensation is addressed in the portion of the order that pertains to the L1 Application.

Relief from eviction

26. The Landlord submitted that the Tenant simply cannot afford the lawful monthly rent on the income they receive as they are currently in significant arrears. Therefore, the Landlord is requesting termination of the tenancy.
27. The Tenant, Sonny (aka Sonny Mitchell) Blair (SB) agrees with the outstanding arrear and unpaid utilities. The Tenant requested that the Board exercise its discretion by allowing the Tenant to remain in possession of the rental unit. The Tenant submits that he is waiting on money to come in from an unrelated legal matter but cannot confirm the specifics or the exact date. The Tenant explained that they had an extremely difficult year with job loss and a business deal that went wrong. The Tenant is currently working and makes anywhere from \$6,000 to \$9,000.00 a month. The Tenant provided testimony about their financial situation for both income and expenses. The Tenant did not provide any documentation to corroborate his testimony.
28. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. In making my finding, I considered the significant amount of arrears and the fact that the Tenant has unpaid utilities. I find it difficult to reconcile the Tenant's testimony about the amount of his monthly income with the fact that he has not paid any rent since the application was filed and he has amassed significant arrears. Further I find any additional arrears and/or unpaid utilities would unduly prejudice the Landlord given the current amount is significant. Ultimately, I am not satisfied that the Tenant is willing or able to pay his rent and utilities. I find this is not a viable tenancy and relief from eviction is not appropriate in this matter.
29. Because the tenancy is being terminated pursuant to the L2 application, the L1 portion of the order is not voidable under section 74 of the Act.

**It is ordered that:**

1. Pursuant to the L2 application, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before December 7, 2024.
2. If the unit is not vacated on or before December 7, 2024, then starting December 8, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

3. 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 8, 2024.
4. The Tenant shall pay to the Landlord \$23,261.33, which represents rent arrears owing up to the date of the hearing and the costs for filing the application. See Schedule 1 for the calculation of the amount owing.
5. The Tenant shall also pay the Landlord compensation of \$82.19 per day for the use of the unit starting November 8, 2024, until the date the Tenant moves out of the unit.
6. The Tenant shall pay to the Landlord \$5,827.93, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs.
7. The Tenant shall pay to the Landlord \$4,000.00, which represents the reasonable costs of replacing the damaged property.
8. The total amount the Tenant owes the Landlord is \$33,089.26.
9. If the Tenant does not pay the Landlord the full amount owing on or before December 7, 2024, the Tenant will start to owe interest. This will be simple interest calculated from December 8, 2024, at 6.00% annually on the balance outstanding.

**November 26, 2024**  
**Date Issued**

  
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Teresa Hunt  
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 31, 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 as the tenancy is terminated**

Rent Owing To Hearing Date	\$23,075.33
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	- \$0.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord</b>	<b>\$23,261.33</b>
Plus daily compensation owing for each day of occupation starting November 8, 2024	\$82.19 (per day)