



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

**Citation:** Battaglia v Merner, 2024 ONLTB 78274

**Date:** 2024-10-16

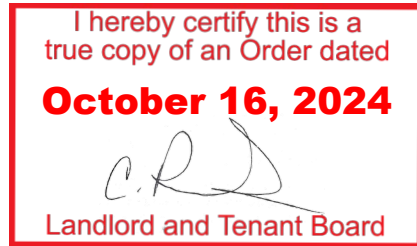
**File Number:** LTB-L-027752-24

**In the matter of:** 1055 Commissioners Rd East  
London ON N5Z4L8

**Between:** Joseph Battaglia

**And**

Tabitha Merner



Landlord

Tenant

Joseph Battaglia (the 'Landlord') applied for an order to terminate the tenancy and evict Tabitha Merner (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on July 25, 2024.

Only the Landlord attended the hearing.

As of 10:47 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

**Determinations:**

Preliminary Issue

*Amending the application*

1. At the hearing, the Landlord explained that he filed with the Board and served the Tenant with an amended application, as well as a copy of the L1/L9 Update Sheet that properly reflected the arrears owing to July 31, 2024. The Landlord also filed a Certificate of Service indicating that the amended application was given to the Tenant on May 22, 2024.
2. Given that the amended application and L1/L9 Update Sheet was served on the Tenant and clearly indicated the arrears the Landlord was seeking, the Tenant effectively had notice of the amount being sought by the Landlord and therefore would not be prejudiced by the amendment. The application is amended to reflect that the Tenant owed rent arrears of \$6,300.00 for the period between December 1, 2022 to April 30, 2024.

N4 Notice of Termination


3. 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.
4. As of the hearing date, the Tenant was still in possession of the rental unit.
5. The lawful rent is \$2,100.00. It is due on the 1st day of each month.
6. Based on the Monthly rent, the daily rent/compensation is \$69.04. This amount is calculated as follows: \$2,100.00 x 12, divided by 365 days.
7. The Tenant has not made any payments since the application was filed.
8. The rent arrears owing to July 31, 2024 are \$12,600.00.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. The Landlord collected a rent deposit of \$2,000.00 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.
11. Interest on the rent deposit, in the amount of \$33.70 is owing to the Tenant for the period from November 23, 2023 to July 25, 2024.
12. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
13. The Tenant did not attend the hearing to provide submissions on my consideration of delaying or denying eviction and the Landlord was not aware of any reason why I should consider same.

**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:**
  - \$19,086.00 if the payment is made on or before October 27, 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 October 27, 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 October 27, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$10,378.30. 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 \$69.04 per day for the use of the unit starting July 26, 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 October 27, 2024, the Tenant will start to owe interest. This will be simple interest calculated from October 28, 2024 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before October 27, 2024, then starting October 28, 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 October 28, 2024.

**October 16, 2024**  
**Date Issued**

  
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Christina Philp  
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 April 28, 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 27, 2024**

Rent Owing To October 31, 2024	\$18,900.00
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>\$19,086.00</b>

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

Rent Owing To Hearing Date	\$12,226.00
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 of the last month's rent deposit	- \$2,000.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$33.70
<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>\$10,378.30</b>
Plus daily compensation owing for each day of occupation starting July 26, 2024	\$69.04 (per day)