



**JAN 18, 2024**

*Kelly Delaney*  
Landlord and Tenant Board

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

**Citation:** McNinch v Arlt, 2024 ONLTB 4967

**Date:** 2024-01-18

**File Number:** LTB-L-051948-22

**In the matter of:** 95 Tanner Street  
Gananoque Ontario K7G2P3

**Between:** Dennis McNinch Landlord

**And**

Rebecca Arlt Tenant

Dennis McNinch (the 'Landlord') applied for an order to terminate the tenancy and evict Rebecca Arlt (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 8, 2024 at 1:00 pm.

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 alleged lawful rent is \$986.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$32.42. This amount is calculated as follows: \$986.00 x 12, divided by 365 days.
5. The Tenant has paid \$6,920.00 to the Landlord since the application was filed.
6. The alleged rent arrears owing to January 31, 2024 are \$3,967.00.
7. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$800.00 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 \$204.00 is owing to the Tenant for the period from May 1, 2009 to January 8, 2024.

10. The Tenant disputed the alleged aren't arrears owing, submitting that although she was initially responsible for the water utility, the township of Gananoque Ontario, passed a by law that utilities were a landlord responsibility, and the Landlord should not have included the water utility in her rent commencing January 2023, as such the rent in 2023 should have only increased to \$886.62 not the \$986.00 that the Landlord charged. It was her position that the rent arrears owing should only be \$3,062.19.
11. The Tenant than testified she intended to maintain the tenancy, submitting that given her source of income was ODSP she could afford a payment plan that saw her pay a monthly rent of \$886.62 plus an additional \$200.00 towards the arrears, which would take approximately 16 months.
12. In response the Landlord testified that he increased the rent from \$865.00 in December 2022 to \$986.00 in January 2023 due to the fact the tenant stopped paying the water bill, in contravention of the lease agreement, and that the arrears owing were as alleged as the Tenant, despite the increase continued to only pay \$865.00 a month.
13. Given the Tenant failed to provide any evidence to support her claim, that her rights regarding an alleged illegal rent increase would be protected by her own separate application, given she hadn't paid the rent increase, I am satisfied on the balance of probabilities that the lawful monthly rent is \$986.00 and the arrears were \$3,967.00.
14. 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 February 29, 2024, pursuant to subsection 83(1)(b) of the Act.
15. Specifically, given the length of the tenancy and that the Tenant has consistently made payments to the rent I am satisfied that a postponement is warranted to afford the Tenant to secure financial aid or pay down the arrears.

**It is ordered that:**

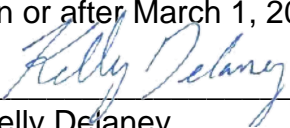
1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$4,168.00 if the payment is made on or before January 31, 2024. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$5,154.00 if the payment is made on or before February 29, 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 February 29, 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 February 29, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$2,418.00 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. If the Tenant does not pay the Landlord the full amount owing on or before February 29, 2024, the Tenant will start to owe interest. This will be simple interest calculated from March 1, 2024, at 6.00% annually on the balance outstanding.
7. If the unit is not vacated on or before February 29, 2024, then starting March 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. 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 1, 2024.

**January 18, 2024**  
**Date Issued**

  
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Kelly Delaney  
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 1, 2024 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 January 31, 2024**

Rent Owing To January 31, 2024	\$10,887.00
Application Filing Fee	\$201.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$6,920.00
<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>\$4,168.00</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 29, 2024**

Rent Owing To February 29, 2024	\$11,873.00
Application Filing Fee	\$201.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$6,920.00
<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>\$5,154.00</b>

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

Rent Owing To Hearing Date	\$10,141.34
Application Filing Fee	\$201.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$6,920.00
<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	- \$800.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$204.00
<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>\$2,418.00</b>
Plus daily compensation owing for each day of occupation starting January 9, 2024	\$32.42 (per day)