



## Order under Section 69 Residential Tenancies Act, 2006

Citation: Nagel v Mclean, 2023 ONLTB 70357

Date: 2023-10-26

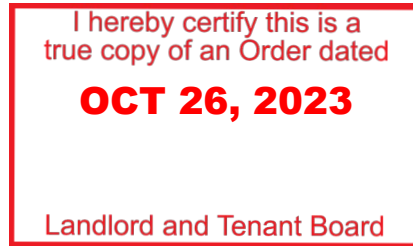
File Number: LTB-L-039897-23

In the matter of: 1, 52 SPADINA AVE  
Burlington ON L8M2X1

Between: Gina Nagel and Oliver Nagel

And

Jessica Mclean



Landlords

Tenant

Gina Nagel and Oliver Nagel (the 'Landlords') applied for an order to terminate the tenancy and evict Jessica Mclean (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on September 28, 2023.

The Landlords and the Tenant attended the hearing.

### Determinations:

1. The Tenant raised a preliminary issue. She claimed that the rent increase from \$1,630.00 to \$1,649.00 in April (no specific date or year was provided) was unlawful therefore the notice was void – which I understand to mean that the Notice to End Tenancy Early for Non-payment of Rent (N4 Notice) was invalid. The Tenant claimed that she received the Notice of Rent increase(N1) from the Landlords sometime in the “new year” – no specific date or year was provided. A copy of the N1 Notice was filed with the Board. This N1 notice was signed by the Landlord Oliver Nagel on January 17, 2022, and indicates that the rent will increase to \$1,649.00 on April 27, 2022. Pursuant to section 136(2) of the *Residential Tenancies Act, 2006* (the 'Act'), an increase in rent is deemed lawful unless an application has been made within one year after the date the increase was first charged, and the lawfulness of the rent increase is an issue in the application. The Tenant had until April 28, 2023, to file an application with respect to the issue of an unlawful rent increase. Since the Tenant did not file such an application, I determined that the rent increase was deemed to be lawful.
2. At the hearing, the Landlords advised the Board that they collected a rent deposit from the Tenant in the amount of \$1,630.00 on February 1, 2021. I have exercised my discretion under section 201(1) of the Act to amend the application to reflect that the Landlords collected a rent deposit from the Tenant. There is no prejudice to the Tenant from this amendment because it does not affect the validity of the N4 Notice.

3. The Landlords 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 \$1,690.00. It is due on the 1st day of each month.
6. Based on the Monthly rent, the daily rent/compensation is \$55.56. This amount is calculated as follows: \$1,690.00 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 September 30, 2023, are \$9,476.00.
9. The Landlords incurred costs of \$186.00 for filing the application and are entitled to reimbursement of those costs.
10. The Landlords collected a rent deposit of \$1,630.00 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 \$87.10 is owing to the Tenant for the period from February 1, 2021 to September 28, 2023.
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 November 28, 2023, pursuant to subsection 83(1)(b) of the Act.
13. The Tenant testified that she suffers from PTSD, including autoimmune disease, and requested a delay in eviction of six months to find alternative accommodation. She also testified that she works with Hamilton Health Science on a part time basis and her monthly income varies depending on the number of shifts. The Tenant estimated she earns \$2,500.00 per month and her monthly expenses equate to a \$1,000.00 but argued that she has not been working due to her medical conditions. When the Board inquired whether the Tenant is proposing repayment agreement, the Tenant reasserted that she wants a six-month delay in eviction.
14. The Landlords argued that the six-month delay in eviction is not reasonable since the Tenant has not proposed any repayment agreement and has not paid any rent. The Landlords claimed they would be agreeable to a 60-day delay in eviction.
15. Considering all the circumstances, I find that it would not be unfair to postpone the eviction to November 28, 2023. The Tenant did not provide sufficient documentary evidence to corroborate her earnings or provide written confirmation from her employer that she is employed. Therefore, I place little weight on this evidence. The amount of the arrears is substantial. While I am sympathetic to the Tenant's illness, the Tenant has not made any good faith payments since the application was filed. The Tenant also did not propose any repayment agreement towards the arrears. Ultimately, I am not satisfied that the tenancy is viable. The Landlords are agreeable to a 60-day extension for eviction. The eviction is

postponed to November 28, 2023. This extension will allow additional time for the Tenant to find either alternative accommodation or voiding this Order.

**It is ordered that:**

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**

- \$11,352.00 if the payment is made on or before October 31, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

- \$13,042.00 if the payment is made on or before November 28, 2023. 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 28, 2023, 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 28, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlords \$7,810.58. 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 Landlords owe 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 Landlords compensation of \$55.56 per day for the use of the unit starting September 29, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlords the full amount owing on or before November 28, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 29, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 28, 2023, then starting November 29, 2023, the Landlords 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 Landlords on or after November 29, 2023.

**October 26, 2023**  
**Date Issued**

---

Inderdeep Padda  
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 29, 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 October 31, 2023**

Rent Owing to October 31, 2023	\$11,166.00
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 Landlords owe 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>\$11,352.00</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before November 28, 2023**

Rent Owing To November 30, 2023	\$12,856.00
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 Landlords owe 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>\$13,042.00</b>

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

Rent Owing To Hearing Date	\$9,341.68
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	- \$1,630.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$87.10
<b>Less</b> the amount the Landlords owe 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 Landlords</b>	<b>\$7,810.58</b>
Plus daily compensation owing for each day of occupation starting September 29, 2023	\$55.56 (per day)