



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

Citation: Agarwal v MacPhee, 2023 ONLTB 24399

Date: 2023-03-21

File Number: LTB-L-042344-22

In the matter of: Lower Unit, 99 PEEL ST
BRANTFORD ON N3S5M3

Between: Atul Agarwal

And

Rebecca MacPhee

I hereby certify this is a
true copy of an Order dated
MAR 21, 2023
Landlord and Tenant Board

Landlord

Tenant

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

This application was heard by videoconference on February 28, 2023. The Landlord, the Landlord's representative, Kelly Hawkes, and the Tenant attended the hearing.

Determinations:

1. On July 7, 2022 the Landlord served the Tenant with a valid Notice to End the Tenancy Early for Non-payment of Rent (N4 Notice) with a termination date of July 22, 2022. The Landlord submitted a Canada Post receipt identifying that the N4 Notice was mailed on July 5, 2022 and delivered to the Tenant's unit on July 7, 2022. I am therefore satisfied that the date of July 7, 2022 listed on the Certificate of Service for the N4 Notice is the date that the N4 Notice was delivered to the Tenant's unit. Accordingly, I find that the N4 Notice was served pursuant to s. 59(1)(b) of the Act.
2. 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.
3. As of the hearing date, the Tenant was still in possession of the rental unit.
4. The lawful rent is \$1,070.00. It is due on the 1st day of each month.
5. Based on the monthly rent, the daily rent/compensation is \$35.18. This amount is calculated as follows: \$1,070.00 x 12, divided by 365 days.
6. The Tenant has paid \$4,420.00 to the Landlord since the application was filed.
7. The rent arrears owing to February 28, 2023 are \$6,280.00. Both parties agreed that these arrears are owed to the Landlord.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

9. The Landlord collected a rent deposit of \$1,045.00 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.
10. Interest on the rent deposit, in the amount of \$42.11 is owing to the Tenant for the period from November 29, 2019 to February 28, 2023.
11. The Landlord's representative submitted that upon the Landlord's initiative, the Landlord and the Tenant established an arrears repayment plan in September 2022, but the Tenant could not make the payments according to the plan. The representative noted that the Landlord changed the repayment plan several times to accommodate the Tenant, but the Tenant failed to make the payments as per the modified plans. The representative submitted further that the Tenant proposed a new payment plan in November 2022; however, the Tenant failed to make payments in accordance with her own plan.

Relief from Eviction

12. The Tenant testified that she worked from home for a period of one year before she suffered a mental breakdown on August 7, 2021, resulting in her sick leave and the start of her financial difficulties. The Tenant testified further that her son suffers from mental health issues, and as a result he is currently not in school, requiring her to remain at home with him and further restricting her employment options. The Tenant testified that her current monthly income is \$1,570.00, including \$1,136.00 from Ontario Works and \$434.00 from child tax credits.
13. The Tenant stated that she is currently not able to work given her son's mental condition; however, she is waiting for Ontario Disability Support Program payments to assist her financially. The Tenant noted that she could pay her monthly rent, but paying the arrears would be more difficult. The Tenant contended that she could pay the Landlord an additional \$360.00 per month towards the arrears.
14. The Tenant remarked that she has not been looking for an alternate rental unit because she can not afford anything else, and if she is evicted she will have no place to live.
15. 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 May 31, 2023 pursuant to subsection 83(1)(b) of the Act.
16. On the basis of the evidence provided, I am satisfied that the Tenant owes the Landlord significant rent arrears, and has no viable timely plan to pay for these arrears and her ongoing monthly rent. I am satisfied that previous rent arrears repayment plans have not been successful, the Tenant has a low fixed income insufficient to pay her rent and her living expenses, and the Tenant has no immediate employment prospects. Given these factors, I am satisfied that the tenancy is not financially sustainable for the Tenant. I therefore find that it would be unfair to the Landlord to grant the Tenant full relief from eviction or conditional relief from eviction through an imposed long-term payment plan.
17. However, given the Tenant's financial status, and her and her son's mental health difficulties, I find it would be reasonable and appropriate to postpone the eviction until May 31, 2023. This will provide the Tenant with more time to search for a suitable alternate

rental unit, and also provide the Tenant with additional time to void the termination of the tenancy over the period of the postponement. I accept that the on-going rent arrears are a financial hardship for the Landlord; however, under the circumstances, I am satisfied that this postponement of the Tenant's eviction is not unfair to the Landlord.

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:**
 - \$7,536.00 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.
 - OR**
 - \$8,606.00 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.
 - OR**
 - \$9,676.00 if the payment is made on or before May 31, 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 May 31, 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 May 31, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$5,378.89. 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 \$35.18 per day for the use of the unit starting March 1, 2023 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 May 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 1, 2023 at 5.00% annually on the balance outstanding.
8. If the unit is not vacated on or before May 31, 2023, then starting June 1, 2023, 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 June 1, 2023.

March 21, 2023
Date Issued

Frank Ebner
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 December 1, 2023 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 March 31, 2023

Rent Owing To March 31, 2023	\$11,770.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,420.00
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	\$7,536.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before April 30, 2023

Rent Owing To April 30, 2023	\$12,840.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,420.00
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	\$8,606.00

C. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 31, 2023

Rent Owing To May 31, 2023	\$13,910.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,420.00
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	\$9,676.00

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

Rent Owing To Hearing Date	\$10,700.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,420.00
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	- \$1,045.00
Less the amount of the interest on the last month's rent deposit	- \$42.11
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	\$5,378.89
Plus daily compensation owing for each day of occupation starting March 1, 2023	\$35.18 (per day)