



**FEB 07, 2024**

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

**Citation:** Yan v Mackinnon, 2024 ONLTB 9118

**Date:** 2024-02-07

**File Number:** LTB-L-065166-23

**In the matter of:** 133, 1035 VICTORIA RD S  
GUELPH ON N1L0H5

**Between:** Bin Yan Landlord

**And**

Melissa Mackinnon Tenants  
Marty Van Alphen

Bin Yan (the 'Landlord') applied for an order to terminate the tenancy and evict Melissa Mackinnon and Marty Van Alphen (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

This application was heard by videoconference on January 15, 2024.

The Landlord and the Tenants attended the hearing.

**Determinations:**

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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 Tenants were still in possession of the rental unit.
3. The lawful rent is \$2,232.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$73.38. This amount is calculated as follows: \$2,232.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to January 31, 2024 are \$15,300.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

8. The Landlord collected a rent deposit of \$2,100.00 from the Tenants 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 \$128.04 is owing to the Tenants for the period from January 31, 2020 to January 15, 2024.

Relief from eviction

10. 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.
11. The Landlord testified that they attempted to communicate with the Tenant regarding a repayment plan in July 2023. There was no response from the Tenants. I am satisfied the Landlord met their obligation to attempt to negotiate a repayment plan with the Tenant.
12. The Landlord sought an eviction order based on the amount of arrears. The arrears were described as substantial with no payments made by the Tenants since the application was filed.
13. The Tenants would like to preserve their tenancy and avoid eviction. They have children and have significant ties to the neighbourhood and the community. The Tenant, Melissa Mackinnon testified that they stopped paying the rent as she has been ill and her husband has had to take care of the children. She has been out of the hospital since March 2022. She is currently unemployed and not receiving any income. The Tenants have 4 children however, only 2 reside in the rental unit. Her husband is currently employed.
14. The Tenants did not provide evidence toward a repayment plan as they testified that a family member was currently at the bank to secure a loan to pay off the entire amount of the arrears. The Tenants' limited single income and unsubstantiated support from her family toward the arrears suggests that this tenancy is not viable. The Tenants are heavily reliant on outside sources to financially support this tenancy. The Tenants did not provide any witnesses to testify that they would be assisting her paying the rent. Therefore, there is no way to suggest a repayment plan. The Tenants testified that they would require 6 months to find a new place should the application for eviction be granted.
15. I find it would be unfair to grant the lengthy delay the Tenants requested. The Tenants' limited income and unsubstantiated income from her side business suggest there is not viable way for the Tenant to pay the rent or the arrears in a reasonable amount of time. There are substantial rent arrears owing with no realistic plan for how to pay it back. Therefore, I find there is no realistic way to impose a payment plan since there is no evidence supporting how any repayment plan could be satisfied.
16. I do however find that short delay to the end of the rental period is fair in the circumstances, so the Tenants can arrange their affairs and move, or pay off the arrears and void the eviction order if they are able.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants voids this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord:**
  - \$17,718.00 if the payment is made on or before February 29, 2024. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants 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 Tenants may only make this motion once during the tenancy.
4. **If the Tenants does not pay the amount required to void this order the Tenants must move out of the rental unit on or before February 29, 2024**
5. If the Tenants does not void the order, the Tenants shall pay to the Landlord \$12,126.66. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$73.38 per day for the use of the unit starting January 16, 2024 until the date the Tenants moves out of the unit.
7. If the Tenants does not pay the Landlord the full amount owing on or before February 18, 2024, the Tenants will start to owe interest. This will be simple interest calculated from February 19, 2024 at 7.00% annually on the balance outstanding.
8. 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.
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 March 1, 2024.

**February 7, 2024**  
**Date Issued**

  
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Camille Clyne  
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 Tenants 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	\$17,532.00
Application Filing Fee	\$186.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$17,718.00</b>

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

Rent Owing To Hearing Date	\$14,168.70
Application Filing Fee	\$186.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$2,100.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$128.04
<b>Total amount owing to the Landlord</b>	<b>\$12,126.66</b>
Plus daily compensation owing for each day of occupation starting January 16, 2024	\$73.38 (per day)