



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Rykert Development Group Inc v Thomas, 2024 ONLTB 28923

**Date:** 2024-05-02

**File Number:** LTB-L-097767-23

**In the matter of:** MAIN, 208 RYKERT ST  
ST CATHARINES ON L2S2B7

**Between:** Rykert Development Group Inc

**And**

Steve Thomas  
Hayley Collins

I hereby certify this is a  
true copy of an Order dated  
**MAY 2, 2024**  
Landlord and Tenant Board

Landlord

Tenants

Rykert Development Group Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Steve Thomas and Hayley Collins (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on April 3, 2024.

The Landlord's legal representative and the Tenants attended the hearing.

### Determinations:

1. The Tenant Steve Thomas was not signed into the proceedings and his presence only became known during the hearing. Testimony at the hearing was only received from Hayley Collins (HC).

#### Service of the N4 Notice Termination

2. The Tenants claim that they did not receive the N4 notice of termination on which this application is based. HC testified that the Tenants did not receive an "eviction notice", only the hearing notice.
3. A certificate of service was uploaded to the Tribunals Ontario portal by the Landlord showing service was effected by "Mike Montazer" by placing the document under the rental unit door or through a mail slot in the door on November 15, 2023.
4. Mike Montazer was called as a witness by the Landlord's representative and testified that he served the N4 notice to the Tenants and signed the certificate of service.

5. The witness testified that he had photos time stamped from when he served the N4 notice which showed the notices were delivered to the Tenants on November 15, 2023 at approximately 11:02 a.m. The witness further testified that he had 6 photos, two copies of each photo and that notice was provided to the Tenants through the door of the rental unit.
6. The witness testified during the hearing that he was able to provide the date, time, and method of service by reviewing the photographs from that date.
7. The Tenants were unable to provide evidence to the contrary however, I found the witness' testimony to be credible. I am satisfied that the N4 Notice was validly served on the Tenants by placing it under the door of the rental unit on November 15, 2023.

#### Adjournment Request

8. During their testimony the Tenant indicated they wanted a lawyer and were not sure of "what's going on or how to do this."
9. It was noted that the Tenants met with Tenants Duty Counsel on the date of the hearing and cross-examination of the Tenants revealed that they had previously sought legal advice in relation to this application.
10. I did not find it appropriate to adjourn the hearing as the Tenants had previously sought legal advice and had the assistance of Tenant Duty Counsel prior to the hearing.

#### Amount owing

11. As of the hearing date, the Tenants were still in possession of the rental unit.
12. The lawful rent is \$2,045.00. It is due on the 1st day of each month.
13. Based on the Monthly rent, the daily rent/compensation is \$67.23. This amount is calculated as follows:  $\$2,045.00 \times 12$ , divided by 365 days.
14. The Tenants have paid \$1,022.50 to the Landlord since the application was filed.
15. The rent arrears owing to April 30, 2024 are \$11,942.50.
16. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
17. The Landlord collected a rent deposit of \$2,045.00 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.
18. Interest on the rent deposit, in the amount of \$66.11 is owing to the Tenants for the period from December 19, 2022 to April 3, 2024.

Section 82 issues

19. The Tenants sought to raise s. 82 issues in relation to hydro bills as an offset to the arrears but did not provide notice or evidence to the Landlord and I declined to hear the Tenants issues.
20. The Board's Interpretation Guideline 11 Rent Arrears provides direction and guidance on s. 82 issues, specifically,  
  
"Under sections 82 and 87(2) of the RTA, during any hearing about rent arrears, a tenant or former tenant may raise any issue that could be the subject of a tenant application, such as maintenance problems or harassment. The tenant must give the landlord and LTB a written description of each issue at least 7 days before the hearing, unless the LTB orders otherwise. The tenant should include details such as a description of the issue, when it began, and when the landlord became aware of the issue."
21. The Tenants had not complied with the requirement to outline each issue intended to be raised at least seven days before the hearing. The Tenants did not provide a reasonable explanation for their noncompliance with the disclosure requirement.

Section 83 considerations

22. 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, 2024 pursuant to subsection 83(1)(b) of the Act.
23. The Tenants requested a payment arrangement proposing to pay \$800 towards arrears on the 30<sup>th</sup> day of each month until the arrears are paid in full, in addition to the regular monthly rent. The payment plan proposed by the Tenants would span approximately 15 months.
24. The Tenants testified that their monthly income is comprised in part of ODSP which includes a housing allowance, and the other Tenant has a roofing job and that income fluctuates.
25. The Tenants gave testimony of their income and expenses to determine the viability of a payment plan and based on the numbers provided, the Tenants have a surplus of income but have only made a recent payment to the Landlord.
26. The Tenants gave evidence under cross examination that they were not paying rent due to maintenance issues in the rental unit involving rodents and mold. The Tenant's testimony is that they experienced issues with "Mike" and that they were working with someone new and were now prepared to pay rent.
27. Based on the Tenant's evidence about their financial situation, the fact that the Tenants were voluntarily withholding of rent, the protracted length of the payment plan proposed, and the fact that there was only a modest payment towards arrears made just prior to the hearing, I do not find it appropriate to order a payment plan. Ultimately, I am not satisfied that the Tenants can afford the rent, let alone the arrears.

28. The Tenants testified that they would need significant time to vacate the rental unit requiring 90 days to 6 months to find a new residence. The Tenants also testified that they had made attempts to access funds through ODSP to assist with the arrears.
29. The Tenants also testified that they reside in the rental unit with their children and cats. The Tenant's evidence is that their mental health issues are the reason for receipt of ODSP.
30. Based on the Tenant's circumstances and the potential for them to receive assistance from ODSP which could result in arrears being paid, I find it would not be unfair to delay termination of the tenancy to May 31, 2024. The Landlord is holding a last month's rent deposit which will mitigate prejudice to the Landlord.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$14,173.50 if the payment is made on or before May 31, 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 have paid the full amount owing as ordered plus any additional rent that became due after May 31, 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 do not pay the amount required to void this order the Tenants must move out of the rental unit on or before May 31, 2024**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$8,174.08. 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 \$67.23 per day for the use of the unit starting April 4, 2024 until the date the Tenants moves out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before May 31, 2024, the Tenants will start to owe interest. This will be simple interest calculated from June 1, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before May 31, 2024, then starting June 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 June 1, 2024.

**May 2, 2024**  
**Date Issued**

  
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Kyle McGraw  
Member, Landlord and Tenants 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, 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 May 31, 2024**

|   |                    |
|---|--------------------|
| Rent Owing To May 31, 2024  | \$15,010.00        |
| Application Filing Fee  | \$186.00           |
| NSF Charges   | \$0.00             |
| <b>Less</b> the amount the Tenants paid to the Landlord since the application was filed | - \$1,022.50       |
| <b>Less</b> the amount the Tenants paid into the LTB since the application was filed    | - \$0.00           |
| <b>Less</b> the amount the Landlord owes the Tenants for an {abatement/rebate}          | - \$0.00           |
| <b>Less</b> the amount of the credit that the Tenants is entitled to                    | - \$0.00           |
| <b>Total the Tenants must pay to continue the tenancy</b>                               | <b>\$14,173.50</b> |

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

|   |                      |
|---|----------------------|
| Rent Owing To Hearing Date  | \$11,121.69          |
| Application Filing Fee  | \$186.00             |
| NSF Charges   | \$0.00               |
| <b>Less</b> the amount the Tenants paid to the Landlord since the application was filed | - \$1,022.50         |
| <b>Less</b> the amount the Tenants paid into the LTB since the application was filed    | - \$0.00             |
| <b>Less</b> the amount of the last month's rent deposit                                 | - \$2,045.00         |
| <b>Less</b> the amount of the interest on the last month's rent deposit                 | - \$66.11            |
| <b>Less</b> the amount the Landlord owes the Tenants for an {abatement/rebate}          | - \$0.00             |
| <b>Less</b> the amount of the credit that the Tenants is entitled to                    | - \$0.00             |
| <b>Total amount owing to the Landlord</b>   | <b>\$8,174.08</b>    |
| Plus daily compensation owing for each day of occupation starting April 4, 2024         | \$67.23<br>(per day) |