



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Loney v Fawcett, 2024 ONLTB 1640

**Date:** 2024-01-08

**File Number:** LTB-L-007202-23

**In the matter of:** 12 TODD ST  
CAMBRIDGE ON N1R1G5

**Between:** Su Loney Landlord

**And**

Penny Fawcett Tenants  
Hal Jeremy Jackson

Su Loney (the 'Landlord') applied for an order to terminate the tenancy and evict Penny Fawcett and Hal Jeremy Jackson (the 'Tenants') because:

- the Tenants did not pay the rent that the Tenants owe (L1 Application); and
- the Tenants have been persistently late in paying the Tenants' rent (L2 Application).

This application was heard by videoconference on November 30, 2023.

Only the Landlord's Legal Representative Howard Tavroges attended the hearing.

As of 9:47 AM, the Tenants were not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

**Determinations:**

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment 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 \$2,423.74. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$79.68. This amount is calculated as follows: \$2,423.74 x 12, divided by 365 days.
5. The Tenants have paid \$21,176.37 to the Landlord since the application was filed.
6. The rent arrears owing to November 30, 2023 are \$9,215.99.
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 \$2,423.74 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 \$70.72 is owing to the Tenants for the period from October 1, 2022 to November 30, 2023.
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 January 31, 2024 pursuant to subsection 83(1)(b) of the Act.
11. The Tenants have made significant payments towards the rent since the application was filed. As such, I find that it would not be unfair to delay the eviction until January 31, 2024 to allow the Tenants to repay the arrears and preserve the tenancy. The Landlord is holding a last month's rent deposit and will not be prejudiced by the delay.

#### Late payment of rent

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. On January 10, 2023, the Landlord gave the Tenants an N8 notice of termination (the 'N8 Notice'), deemed served on January 15, 2023. The notice of termination alleges that the Tenants paid the rent late for 11 out of the 13 months preceding the service of the N8 Notice.
4. On the uncontested evidence of the Landlord, I find that the Tenants have persistently failed to pay the rent on the date it was due. The rent is due on the first day of each month. The rent has been paid late 11 times in the 13 months preceding the N8 Notice.
5. The Landlord warned the Tenants that paying rent late was unacceptable by sending the Tenants letters every month. Despite the Landlord's communications, the Tenants continued to pay rent late every month after the N8 Notice was served.
6. 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

grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

7. The Tenants have made significant payments towards the rent since the application was filed, which suggests to me that they are willing to take steps to preserve their tenancy. The Tenants were not present at the hearing to advise the Board of their circumstances; however, I find it would not be unfair to grant relief from eviction on the condition that rent be paid on time for a period of 12 months if the Tenants repay the arrears 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:**
  - \$14,249.47 if the payment is made on or before January 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 January 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 January 31, 2024.**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$6,907.53. 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 \$79.68 per day for the use of the unit starting December 1, 2023 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before January 31, 2024, the Tenants will start to owe interest. This will be simple interest calculated from February 1, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before January 31, 2024, then starting February 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 February 1, 2024.

10. If the Tenants void the order as set out above, the tenancy between the Landlord and the Tenants will continue on the conditions set out below.
11. The Tenants shall pay the Landlord the rent in full and on time on or before the first day of each month for the period of February 2024 – January 2025.
12. If the Tenants fail to comply with the conditions set out in paragraph 11 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenants. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenants.

**January 8, 2024**

**Date Issued**

\_\_\_\_\_  
Kate Sinipostolova

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 August 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 January 31, 2024**

Rent Owing To January 31, 2024	\$35,239.84
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	- \$21,176.37
<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>\$14,249.47</b>

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

Rent Owing To Hearing Date	\$30,392.36
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	- \$21,176.37
<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	- \$2,423.74
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$70.72
<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>\$6,907.53</b>
Plus daily compensation owing for each day of occupation starting December 1, 2023	\$79.68 (per day)

2024 ONL TB 1640 (CanLII)