



## **Order under Section 94.7 Residential Tenancies Act, 2006**

**Citation:** Winkleigh Co-Operative Housing Corp. v Mcavella, 2024 ONLTB 3456

**Date:** 2024-01-16

**File Number:** LTB-C-021784-23

**In the matter of:** 55, 960 LIMERIDGE RD E  
HAMILTON ON L8W2C4

**Between:** Winkleigh Co-Operative Housing Corp. **Co-op**

**and**

Michele Mcavella **Co-op Members**  
Brad Rothwell

Winkleigh Co-Operative Housing Corp. (the 'Co-op') applied to the Landlord and Tenant Board (LTB) for an order to end the occupancy of the member unit and evict Michele Mcavella and Brad Rothwell (the 'Co-op Members') because the Co-op Members did not pay the regular monthly housing charges that they owe.

A Case Management Hearing (CMH) was held by videoconference on January 3, 2024, at 9:00 am. Co-op Representatives Kimberly Buswell, Paralegal, and Kelly Jackson, Property Manager attended the CMH.

The Notice of Hearing sets out the time, place, and location of the CMH and states that if the Co-op Members do not attend the CMH, the hearing on the merits may proceed on the same day and the LTB may issue an order evicting the Co-op Members. I was satisfied the Notice of Hearing was served and that the Co-op Members had proper notice of the CMH.

The Co-op Members did not serve and file a Response to the Application as required by Rule 12.4. In these circumstances, Rule 12.5 provides that the Co-op Members are deemed to have accepted all of the facts and allegations in the Application and permits the LTB to decide the Application based on the materials before it.

As of 9:31 am, the Co-op Members were not present or represented at the hearing although properly served with notice of this hearing. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Co-op's evidence.

**Determinations:**

1. The Co-op served the Co-op Members with a Notice to End Occupancy for Non-payment of Regular Monthly Housing Charges (N4C Notice). The Co-op Members did not void the notice by paying the amount of regular housing charges owing by the termination date in the N4C Notice or before the date the application was filed.
2. As of the hearing date, the Co-op Members are still in possession of the member unit.

3. The regular monthly housing charge(RMHC) of \$1,191.00 increased to **\$1,208.00 effective July 1, 2023**, and becomes due and payable on the 1<sup>st</sup> day of each month.
4. The daily compensation is calculated as follows: \$1,208.00 x 12, divided by 365 days.
5. The regular monthly housing charges owing to January 31, 2024 are \$18,748.08.
6. The Co-op incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
7. The Co-op Members are owed \$1,115.00 for damage deposit. The deposit is set off against the amount the Co-op Members owe.
8. Based on all the uncontested evidence presented to me I am satisfied that the Co-op Members have not paid the total regular monthly housing charges required for the period up to January 31, 2024, in order to avoid termination.
9. There were no circumstances to support consideration of relief from eviction in accordance with subsection 94.12(2).
10. All of my reasons in support of this order are contained in the above paragraphs. No further reasons will be issued.

**It is ordered that:**

- [1] Unless the Co-op Members void this Order, by paying the amount, as set out in paragraph [4] the Co-op Member's occupancy rights are terminated, and the member's unit must be vacated by **January 27, 2024**
- [2] **If the Co-op Members do not void this Order as set out below, the Co-op Members shall vacate the unit and pay \$16,730.21.** This total amount represents the following:
  - a) \$17,540.08 arrears of the regular monthly housing charges owing up to December 31, 2023, **PLUS**;
  - b) \$119.13 per diem rent from January 1, 2024, to January 3, 2023, the date of this CMH (\$1,208.00 x 12 months divided by 365 days x 3 days); **PLUS**
  - c) \$186.00 for the application filing fee; **MINUS**
  - d) \$1,115.00 the damage deposit held by the Co-op.
- [3] If the Co-op Members do not void this Order and fail to move out of the member unit, the Co-op Members shall also pay the Co-op compensation of \$39.71 per day for the use of the unit starting January 4, 2024 until the date the Co-op Members move out of the unit
- [4] **If the Co-op Member wishes to void this Order and remain in the member unit, the Co-op Member must pay to the Co-op or the LTB in Trust on or before January 27,**

**2024, the amount of \$18,934.08.** (This total amount represents arrears of the regular monthly charges up to January 31, 2024, **plus** \$186.00 for the application filing fee).

- [5] If the Co-op Members do not pay the Co-op the full amount owing on or before January 27, 2024, the Co-op Members will start to owe interest. This will be simple interest calculated from January 28, 2024, at 7.00% annually on the balance outstanding.
- [6] If the unit is not vacated on or before January 27, 2024, then starting January 28, 2024, the Co-op may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
- [7] Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Co-op on or after January 28, 2024.
- [8] The Co-op Members may also make a motion at the LTB to void this order under section 74(11) and 94.16(2)(b) of the Act, if the Co-op Members have paid the full amount owing as ordered plus any additional regular monthly housing charges that became due after January 27, 2024, but before the Court Enforcement Office (Sheriff) enforces the eviction. The Co-op Members may only make this motion once during the occupancy agreement with the Co-op.

**January 16, 2024**

**Date Issued**

15 Grosvenor Street, Ground Floor  
Toronto ON M7A 2G6

C. M. Landon, Hearing Officer,  
Landlord and Tenant Board

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 July 28, 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 Co-op Members must pay to void the eviction order and continue the occupancy if the payment is made on or before January 27, 2024**

Regular Monthly Housing Charges Owing To January 31, 2024	\$18,748.08
Total Other Housing Charges	\$0.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Co-op Members paid into the Co-op since the application was filed	- \$0.00
<b>Less</b> the amount the Co-op Members paid into the LTB since the application was filed	- \$0.00
<b>Total the Co-op Members must pay to continue the occupancy</b>	<b>\$18,934.08</b>

**B. Amount the Co-op Members must pay if the occupancy is terminated**

Regular Monthly Housing Charges Owing To Hearing Date	\$17,659.13
Total Other Housing Charges	\$0.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Co-op Members paid into the Co-op since the application was filed	- \$0.00
<b>Less</b> the amount the Co-op Members paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of refundable deposits	- \$1,115.00
<b>Less</b> the amount of the credit that the Co-op Members is entitled to	- \$0.00
<b>Total amount owing to the Co-op</b>	<b>\$16,730.21</b>
Plus daily compensation owing for each day of occupation starting January 4, 2024	\$39.25 (per day)

2024 ONLTB 3456 (CanLI)