



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** 2881 DUNDAS MAVETY HOLDINGS INC. v Gayle, 2024 ONLTB 5179

**Date:** 2024-02-16

**File Number:** LTB-L-033909-23

**In the matter of:** 17, 2881 DUNDAS ST W  
TORONTO ON M6P1Y9

**Between:** 2881 DUNDAS MAVETY HOLDINGS INC. Landlord

**And**

Kathleen Gayle Tenant

2881 DUNDAS MAVETY HOLDINGS INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Kathleen Gayle (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 21, 2023.

The Landlord's Legal Representative, K. Lovett, and the Tenant attended the hearing.

### Determinations:

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$2,069.41. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$68.04. This amount is calculated as follows: \$2,069.41 x 12, divided by 365 days.
5. The Tenant has paid \$9,518.94 to the Landlord since the application was filed.
6. The rent arrears owing to November 30, 2023, are \$10,935.40.
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 \$2,069.41 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.
9. Interest on the rent deposit, in the amount of \$46.07 is owing to the Tenant for the period from January 1, 2023, to November 21, 2023.

10. The Tenant testified that she doesn't dispute that she owes the arrears the Landlord has claimed but believes that the Landlord's application should be dismissed as the Tenant believes she voided the notice prior to the Landlord filing the L1 Application.
11. The parties agree the Tenant paid \$6,018.94, which was the amount listed on the N4 Notice of Termination, on April 28, 2023. The Tenant testified that she left the cheques in the mailbox and emailed the Landlord. The Landlord agrees it was received and applied the payment on May 1, 2023.
12. The Tenant testifies that since she paid the amount listed on the N4 Notice of Termination she voided the notice.
13. However, the termination date in the N4 Notice of Termination is April 26, 2023, and the Landlord filed the application on April 27, 2023.
14. Pursuant to section 59(3) of the *Residential Tenancies Act, 2006* (the 'Act'), an N4 notice is voided if, before the landlord files an L1 application, the tenant pays the rent that is in arrears and any additional rent that is due as of the date of payment. A landlord cannot file an L1 application based on an N4 notice that has been voided.
15. In this case, I find that the Tenant did not void the notice before the Landlord filed the application because she did not bring her rent account to a zero balance before the application was filed. Even if I accept the Tenant's evidence that she paid the arrears on April 28, 2023, this was still the day after the application was filed.
16. Since the application, the Tenant has accrued additional arrears and the application filing fee remains outstanding.

### Section 83

17. Section 83 requires that I consider all the circumstances disclosed by the parties at the hearing to determine if it would be appropriate to grant relief from eviction.
18. The Landlord's representative advised that the Landlord has tried to reach out to the Tenant for a repayment plan but was unsuccessful. The Landlord's Representative advised that the Tenant has made some payments and got close to voiding, but since then has not made substantial payments to clear the balance.
19. The Tenant advised the Board that she had recently lost her jobs but is now working a new job. The Tenant also advised that she has 2 young children who live with her.
20. The Tenant has requested a payment plan that will take approximately 26 months to pay off the balance.
21. There are substantial arrears owing and the Tenant testified that her monthly income is less than her monthly rent, excluding her child tax bonus. As such, the Tenant did not satisfy me a repayment plan was a viable option.
22. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the

Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

**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:**
  - \$17,329.63 if the payment is made on or before February 27, 2024. 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 February 27, 2024, 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 February 27, 2024.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$8,365.35. 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 \$68.04 per day for the use of the unit starting November 22, 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 February 27, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 28, 2024, at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before February 27, 2024, then starting February 28, 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 28, 2024.

**February 16, 2024**

**Date Issued**

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Kevin O'Brien

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 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 27, 2024**

Rent Owing To February 29, 2024	\$26,662.57
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$9,518.94
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$17,329.63</b>

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

Rent Owing To Hearing Date	\$19,813.77
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$9,518.94
<b>Less</b> the amount of the last month's rent deposit	- \$2,069.41
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$46.07
<b>Total amount owing to the Landlord</b>	<b>\$8,365.35</b>
Plus daily compensation owing for each day of occupation starting November 22, 2023	\$68.04 (per day)