



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

Citation: McPhail v Loughrin, 2024 ONLTB 29381

Date: 2024-04-30

File Number: LTB-L-049633-22

In the matter of: 9228 FIFTH SIDEROAD
MILTON ON L9T2X9

Between: Douglas McPhail Landlords
Diane McPhail

And

Andrew Jonathan Loughrin Tenants
Deborah Cook

Douglas McPhail and Diane McPhail (the 'Landlords') applied for an order to terminate the tenancy and evict Andrew Jonathan Loughrin and Deborah Cook (the 'Tenants') because:

- the Tenants did not pay the rent that the Tenants owe (L1 Application).
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlords or another tenant (L2 Application).
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the premises (L2 Application)
- the Tenants have knowingly misrepresented the Tenant's income or the income of other members of the Tenant's family who occupy the unit (L2 Application).

Douglas McPhail and Diane McPhail (the 'Landlords') also applied for an order requiring Andrew Jonathan Loughrin and Deborah Cook (the 'Tenants') to pay the money the Tenants would have been required to pay if the Tenants had not misrepresented their income or that of other members of their household.

The Landlords also claimed charges related to NSF cheques.

This application was heard by videoconference on April 16, 2024.

The Landlord's Legal Representative, Elena Grigorieva attended the hearing.

As of 10:20 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.

Amending the Application:

1. The Landlord's Legal Representative requested an amendment of the L2 application to remove Reason 6 that states: The Tenants live in a rent geared to income rental unit and has misrepresented their income or that of the family members living in the rental unit. The Tenants must pay the additional amount they would have been required to pay had they not misrepresented their income.
2. Reason 6 was checked off in error when the Landlords submitted the L2 application.
3. I consented to the request to amend the application to remove Reason 6.

L2 Application (N5 and N6 Notice)

4. The Landlord's Legal Representative stated that the Tenants were no longer in possession of the rental unit having vacated on January 5, 2023.
5. As the tenancy has already terminated, the Landlord's application seeking termination of the tenancy is moot and will therefore not be considered.
6. The Landlord's L2 application is dismissed.

Determinations:

7. The Landlords 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.
8. The Tenants were in possession of the rental unit on the date the application was filed.
9. The Tenants vacated the rental unit on January 5, 2023. Rent arrears are calculated up to the date the Tenants vacated the unit.
10. The lawful rent is \$3,000.00. It was due on the 20th day of each month.
11. The Tenants have not made any payments since the application was filed.
12. The rent arrears owing to January 5, 2023 are \$19,676.71.
13. The Landlords are entitled to \$140.00 for bank fees the Landlords incurred as a result of cheques given by or on behalf of the Tenants which were returned NSF.
14. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The Landlords collected a rent deposit of \$3,000.00 from the Tenants and this deposit is still being held by the Landlords. The rent deposit is applied to the arrears of rent because the tenancy terminated.
16. Interest on the rent deposit, in the amount of \$61.85 is owing to the Tenants for the period from March 11, 2022 to January 5, 2023.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated as of January 5, 2023, the date the Tenants moved out of the rental unit.
2. The Tenants shall pay to the Landlords \$16,940.86. This amount includes rent arrears owing up to the date the Tenants moved out of the rental unit and the cost of filing the application and unpaid NSF charges. The rent deposit and interest the Landlords owes on the rent deposit is deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
3. If the Tenants do not pay the Landlords the full amount owing on or before May 11, 2024, the Tenants will start to owe interest. This will be simple interest calculated from May 12, 2024 at 7.00% annually on the balance outstanding.
4. The Landlord's L2 application is dismissed.

April 30, 2024
Date Issued

Trish Carson
Member, Landlord and Tenant Board

15 Grosvenor St, 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay as the tenancy is terminated

Rent Owing To Move Out Date	\$19,676.71
Application Filing Fee	\$186.00
NSF Charges	\$140.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$3,000.00
Less the amount of the interest on the last month's rent deposit	- \$61.85
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$16,940.86

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