



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

**Citation:** Virhia v Macgillivary, 2024 ONLTB 12845

**Date:** 2024-02-22

**File Number:** LTB-L-062988-23

**In the matter of:** BASEMENT UNIT, 54 LANGSTON DR BRAMPTON  
ON L6V3W7

**Between:** Avtar Virhia Landlord

**And**

Crystal Macgillivary Tenants  
John A Macgillivary

Avtar Virhia (the 'Landlord') applied for an order to terminate the tenancy and evict Crystal Macgillivary and John A Macgillivary (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on January 25, 2024.

The Landlord, the Landlord's Legal Representative Jeff Rodrigues, and the Tenant John A Macgillivary attended the hearing.

**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 \$1,300.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$42.74. This amount is calculated as follows: \$1,300.00 x 12, divided by 365 days.

5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to January 31, 2024 are \$14,290.00.
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 \$1,300.00 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.
9. Interest on the rent deposit, in the amount of \$80.07 is owing to the Tenants for the period from February 1, 2020 to January 25, 2024.

Relief from eviction

10. Section 83(3)(a) of the Act requires the Board to refuse to grant a landlord's application for eviction where the landlord is in serious breach of the landlord's responsibilities or any material covenant in the tenancy agreement. As such, I considered the Tenant's submissions and evidence regarding ongoing maintenance issues in determining whether to deny the eviction.
11. In determining whether the issues the Tenant raised are serious enough to warrant mandatory relief from eviction, I rely on the Board's Interpretation Guideline 7: Relief from Eviction, which states:

A health or safety concern due to lack of repair may be serious enough to justify refusal. Conditions which deprive the tenant of the full use of the premises will usually be serious, particularly if it affects the kitchen, bathroom or sleeping areas.

12. For the following reasons, I am not satisfied that the maintenance issues raised by the Tenant warrant mandatory relief from eviction under section 83(3)(a) of the Act.
13. The Tenant sought relief from eviction under subsection 83(3)(a) of the Act and raised maintenance issues regarding fire code violations, plumbing, and harassment by the Landlord. The burden of proof is on the Tenant to establish, that the Landlord is in serious breach of their obligations.
14. The Tenant testified that the rental unit has multiple fire code violations, including: no fire doors between units, no fire alarms in the kitchen or laundry room, and no windows large enough for emergency egress. The Tenant confirmed that there was one working fire alarm and one working carbon monoxide detector in the unit. Although fire code violations can be a serious safety concern, the Tenant did not lead sufficient evidence for me to make a finding that this issue exists. None of the other issues the Tenant raised are ongoing or serious enough to deprive the Tenant of the full use of the premises. As such, I am not satisfied on a balance of probabilities that the Landlord is in serious breach of the Act within the meaning of section 83(3)(a).

15. The Tenant is not precluded from raising these issues in his own application against the Landlord about maintenance.
16. 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.
17. The Tenant testified that he fell behind in the rent because of a bad business decision. According to the Tenant, entered into a business relationship with a friend who took his money and left him out. The Tenant requested conditional relief from eviction in the form of a 12-month payment plan.
18. The Tenant also testified that the other named tenant, Ms. Crystal Macgillivray, has a physical disability. The Tenant's niece and her children live in the unit above the rental unit. The Tenant testified that they are a close-knit family and would like to preserve the tenancy to be close to them.
19. The Landlord opposed the Tenant's payment plan request and submitted that he is prejudiced by the large arrears. The Landlord believes that the Tenant cannot afford the rental unit and will default on the conditional order.
20. The Tenant testified that his monthly income is \$4,400 and Ms. Macgillivray receives \$600 from ODSP, for a total of \$5,000. The Tenants' monthly expenses come to \$2,265. After paying the lawful monthly rent of \$1,300, the Tenants are left with \$1,435, which is enough to cover an arrears payment of \$1,206.33.
21. Given the income information provided by the Tenant and his circumstances, I find it appropriate to grant conditional relief from eviction. I also consider the twelve-month payment plan to be reasonable. I am mindful of the extensive outstanding arrears, but the Tenants appear committed to paying and appear to be able to afford to do so. Additionally, prejudice to the Landlord will be alleviated through a clause allowing the landlord to terminate the tenancy without further notice to the Tenant should the Landlord fail to comply with conditions imposed.

**It is ordered that:**

1. The Tenants shall pay to the Landlord \$14,476.00 for arrears of rent up to January 31, 2024, and the application filing fee.
2. The Tenants shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:

<b>Date</b>	<b>Amount</b>
March 5, 2024	\$1,206.33
April 5, 2024	\$1,206.33
May 5, 2024	\$1,206.33

June 5, 2024	\$1,206.33
July 5, 2024	\$1,206.33
August 5, 2024	\$1,206.33
September 5, 2024	\$1,206.33
October 5, 2024	\$1,206.33
November 5, 2024	\$1,206.33
December 5, 2024	\$1,206.33
January 5, 2025	\$1,206.33
February 5, 2025	\$1,206.33

3. The Tenants shall also pay to the Landlord new rent on time and in full as it comes due and owing on or before the first day of every month for the period March 1, 2024, to February 28, 2025, or until the arrears are paid in full, whichever date is earliest. If the rent for February has not been paid as of the date of this order, it will be due on March 15, 2024.
4. If the Tenants fail to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenants to the Landlord pursuant to paragraph 1 of this order, along with simple interest at a rate of 7 percent on the balance shall become due and owing to the Landlord the day following the date of default. In addition, the Landlord may, without notice to the Tenants, apply to the LTB within 30 days of the Tenants' breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenants and requiring that the Tenants pay any new arrears, NSF fees and related charges that became owing after January 31, 2024.

**February 22, 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.