



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** 1000544638 ONTARIO INC. v Holden, 2024 ONLTB 5474

**Date:** 2024-01-30

**File Number:** LTB-L-075334-23

**In the matter of:** 8, 1003 NOTRE DAME DR  
LONDON ON N6J3C3

**Between:** 1000544638 ONTARIO INC.

Landlord

**and**

Melissa Holden

Tenant

1000544638 ONTARIO INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Melissa Holden (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 10, 2024.

The Landlord's Agent, Jiggy Bhangu, and the Tenant attended the hearing. The Tenant spoke with Duty Counsel prior to the start of the proceeding.

### Determinations:

1. The Landlord served the Tenant with a 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.

*N4 Notice is valid*

2. Near the outset of the hearing the Tenant sought clarification on whether any arrears incurred under the former landlord were being sought as part of this application. She testified this clarification was sought because the Landlord had at one point approached her and suggested she should be paying arrears owed to the former landlord.
3. An N4 Notice must set out the amount of rent due and so whether there were additional unclaimed arrears owed at the time the N4 Notice was served was relevant.
4. The Landlord's Agent testified the Landlord assumed ownership of the residential complex on August 28, 2023.
5. When a new owner purchases a residential complex, section 18 of the *Residential Tenancies Act, 2006* (the 'Act;') provides that covenants concerning things related to a rental unit run with the land. This has generally been interpreted by the Board as meaning that the new owner steps into the shoes of the former landlord. Therefore, upon the transfer of ownership, unless any arrears outstanding to the date of sale were assigned to

the former landlord by the Landlord, only the Landlord was able to pursue arrears owed by the Tenant.

6. The Landlord's Agent testified when the Landlord purchased the residential complex the former landlord advised all prior arrears of the Tenant had been waived and forgiven and that the Tenant did not owe any arrears. He further testified no arrears were assigned to the former landlord. As a result, he confirmed the only arrears outstanding were those which were incurred starting September 1, 2023 - which were the subject of the N4 Notice - and that no arrears were owed to the former landlord.
7. While the Tenant disputed how much had been forgiven, after the above clarification the Tenant did not dispute the amount of arrears sought on the N4 Notice or otherwise was incorrect and admitted she owed the amount sought by the Landlord on this application.
8. As a result, we find the N4 Notice valid.

#### *L1 Determinations*

9. As of the hearing date, the Tenant was still in possession of the rental unit.
10. The lawful rent is \$821.53. It is due on the 1st day of each month.
11. Based on the Monthly rent, the daily rent/compensation is \$27.01. This amount is calculated as follows:  $\$821.53 \times 12$ , divided by 365 days.
12. The Tenant has paid \$300.00 to the Landlord since the application was filed.
13. The rent arrears owing to January 31, 2024, are \$3,807.65.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The Landlord collected a rent deposit of \$750.00 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.
16. Interest on the rent deposit, in the amount of \$95.60 is owing to the Tenant for the period from May 1, 2016, to January 10, 2024.

#### *Considerations under section 83*

17. We 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 February 29, 2024, pursuant to subsection 83(1)(b) of the Act.
18. The Landlord sought a standard order. The Tenant requested a delay of at least one year as she has experienced employment issues including an unresolved and outstanding grievance against Uber Technologies Inc. The Landlord opposed the Tenant's request and submitted it was not reasonable.
19. The residential complex is one of two multi-unit complexes owned by the Landlord. The Landlord's Agent testified the Landlord has tried to work with the Tenant to assist her

including helping her find employment but the Tenant advised she could not work the types of jobs suggested by the Landlord.

20. The Landlord's Agent also testified the Landlord has previously asked the Tenant for a payment plan but, at this time, they do not believe that the Tenant is able to pay her monthly rent let alone any arrears. This lack of faith was compounded by the fact that there had been months of arrears outstanding at the time the Landlord purchased the building, which, although forgiven, nonetheless meant the Tenant's track record of non-payment of rent goes back further than just September 1, 2023.
21. The Landlord's Agent further testified the monthly rent is inclusive of utilities and, as a result, the arrears also reflect costs that come due to third parties each month and that the Landlord is also incurring costs making changes to the building.
22. While the Tenant testified utilities are included in her rent because the residential complex utilizes aluminum wiring, she did not submit or provide any evidence that this type of wiring was an ongoing serious breach of the Landlord's obligations under the Act. Instead, she testified the presence of aluminium wiring prohibited the installation of suite meters. As a result, we did not find there was a basis for mandatory denial of eviction under s. 83(3) of the Act.
23. The Tenant has lived in the rental unit for seven years. The Tenant testified to long-standing employment issues with Uber and her attempts to mitigate these by seeking similar work as a driver with other employers – to no avail.
24. The Tenant testified she has several ongoing grievances against Uber, has faced retaliation from Uber, and is waiting for resolution of her grievances. The Tenant admitted she does not know when these grievances will be resolved and also admitted that she does not have any document that provides Uber owes her funds as a result of any legal process.
25. The Tenant did testify she recently started a new job but admitted her current income is greater than her expenses. While seeking a second job, there was no evidence the Tenant had any additional source of income at the time of the hearing.
26. The Tenant testified that if she were evicted, she would not be able to secure another rental unit, will face homelessness, and would likely end up in a shelter as she has no friends or family with whom she can reside.
27. The Tenant also testified she was concerned she would not have a place to keep her deceased mothers' ashes, which are currently in the rental unit, and any eviction would constitute a disturbance of the dead.
28. While the Tenant submitted having to move her mother's ashes invoked religion as an issue in this proceeding, the Tenant provided no evidence her failure to pay rent or the Landlord's application in in anyway related to the Tenant's religious practice. In fact, the Tenant's evidence was that her mother had conveyed her wishes as to the final resting

place for her ashes but the Tenant has not yet been able to comply due to circumstances in her life.

29. The Tenant's submissions that her rent ought not to be more than 35% of her income does not change what her lawful monthly rent actually is or how much rent arrears she owes the Landlord. As this is not a rent-g geared-to-income unit, the lawful rent is the amount agreed to by the parties at the beginning of the tenancy plus any lawful rent increases made by the Landlord.
30. The Tenant also submitted that where an employee files a workplace grievance they should not be able to be evicted for 5 years. That is not the current state of the law under the Act that we must apply. As it stands, we are not aware of any law that mandates a denial of eviction to persons engaged in a workplace grievance process.
31. We are sympathetic to the Tenant's circumstances but given that her monthly expenses exceed her income, that there are months of outstanding arrears with minimal payment, and no concrete evidence of any additional source of funds to pay off the arrears or pay rent going forward, we find a payment plan is not reasonable and the tenancy must be terminated.
32. In light of the fact that the Tenant cannot currently afford the rental unit, we find an extended eviction date of one year is not reasonable. That said, there is a last month's rent on deposit, and we find it reasonable to provide the Tenant with one month to seek and secure alternative living arrangements. This will also provide the Tenant with additional time to comply with her mother's wishes regarding her final resting place. We therefore have extended the eviction date to February 29, 2024.

**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:**
  - \$3,993.65 if the payment is made on or before January 31, 2024. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$4,815.18 if the payment is made on or before February 29, 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 29, 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 29, 2024**

5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$2,596.62. 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 \$27.01 per day for the use of the unit starting January 11, 2024 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 3, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 4, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before February 29, 2024, then starting March 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 March 1, 2024.

**January 30, 2024**

**Date Issued**

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Rebecca Case  
Vice Chair, Landlord and Tenant Board

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Reid Jackson  
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 September 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 Tenant 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	\$4,107.65
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	- \$300.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$3,993.65</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 29, 2024**

Rent Owing To February 29, 2024	\$4,929.18
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	- \$300.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$4,815.18</b>

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

Rent Owing To Hearing Date	\$3,556.22
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	- \$300.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$750.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$95.60
<b>Total amount owing to the Landlord</b>	<b>\$2,596.62</b>
Plus daily compensation owing for each day of occupation starting January 11, 2024	\$27.01 (per day)