



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

**Citation:** McKENZIE AUCTION COMPANY LIMITED v Vecchiarelli, 2023 ONLTB 81735

**Date:** 2023-12-19

**File Number:** LTB-L-026335-23

**In the matter of:** 950 EXMOUTH ST  
SARNIA ON N7S1V9

**Between:** McKENZIE AUCTION COMPANY LIMITED Landlord

**And**

John Vecchiarelli Tenant

McKENZIE AUCTION COMPANY LIMITED (the 'Landlord') applied for an order to terminate the tenancy and evict John Vecchiarelli (the 'Tenant') because:

- the Tenant has been persistently late in paying the Tenant's rent.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on October 31, 2023.

The Landlord's agent, Lindsay McKenzie, and their legal representative, Wendy Cavacas, representative, and the Tenant attended the hearing.

**Determinations:**

1. The Landlord's L2 application is based on a N8 notice of termination served to the Tenant on March 28, 2023 with a termination date of May 31, 2023.
2. This is a month-to-month tenancy in which the rent is due on the first of the month.
3. The Tenant was in possession of the rental unit on the date the application was filed.
4. The Landlord alleges that the Tenant has persistently failed to pay the rent on the date it was due 26 out of 26 months between January 2021 through to March 2023. Since the N8 notice of termination was served, the Tenant has not paid their rent for any of the months up to the date of this hearing.

5. As such, the Landlord seeks a termination of the tenancy and reimbursement of the \$186.00 application filing fee.
6. The Tenant was required to pay the Landlord \$7,218.25 in daily compensation for use and occupation of the rental unit for the period from June 1, 2023 to October 31, 2023.
7. Based on the Monthly rent, the daily compensation is \$47.18. This amount is calculated as follows: \$1,435.00 x 12, divided by 365 days.
8. The Landlord collected a rent deposit of \$1,400.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$0.00 is owing to the Tenant for the period from May 20, 2021.
9. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.
10. The Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the first day of the month. According to the N8 Notice, the Tenant paid the rent late every month during the 26-month period between January 2021 and March, 2023. The Tenant did not dispute that he paid the rent on the dates specified in the N8 Notice.

#### Section 83 considerations

11. The Tenant testified that he has not paid any rent since April 2023 because he did not have any income. The Tenant testified that he may be returning to work shortly but was unaware of exactly when.
12. The Tenant testified that he isn't receiving any income now nor does he have any savings.
13. The problem is that I am not satisfied on a balance of probabilities that the Tenant can afford the rent. The Tenant did not come to the hearing with any documentation to corroborate his evidence about his financial situation. The Tenant already owes the Landlord approximately \$6,000.00 in arrears of rent and in his testimony the Tenant was unable to provide a concrete date when he will be able to pay the Landlord this amount.
14. More relevant to this application, I am not convinced that the Tenant is able to pay the rent on time. The Tenant has been paying his rent late since January 2021. For most of that time he was employed, and he was still unable to pay the rent when it was due. Now the Tenant is unemployed, and I am not convinced that this will make it more possible or likely that he will change his behaviour and pay his rent on time. In his testimony, the Tenant could not point to anything that has changed in his life since the N8 Notice was served that would help facilitate paying his rent on time. I do not think it would be appropriate to order conditional relief if I find that it is unlikely that the Tenant would be able to comply with an order requiring him to pay his rent on time.
15. When I asked the Tenant if he had any evidence to present in support of delaying or denying eviction under section 83 of the Act, he did not address whether he would need more time to move out if the application was granted.

16. Accordingly, I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act 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. The Tenant must move out of the rental unit on or before January 5, 2024.
2. If the unit is not vacated on or before January 5, 2024, then starting January 6, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. 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 January 6, 2024.
4. The Tenant shall pay to the Landlord \$7,218.25, which represents compensation for the use of the unit from June 1, 2023 to October 31, 2023.
5. The Tenant shall also pay the Landlord compensation of \$47.18 per day for the use of the unit starting November 1, 2023 until the date the Tenant moves out of the unit.
6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. The Landlord owes \$1,467.62 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenant.
8. The total amount the Tenant owes the Landlord is \$5,936.62.
9. If the Tenant does not pay the Landlord the full amount owing on or before January 5, 2024, the Tenant will start to owe interest. This will be simple interest calculated from January 6, 2024 at 7.00% annually on the balance outstanding.

**December 19, 2023**

**Date Issued**

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Colin Elsby

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 of the Tenant expires on July 6, 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.