



Jan Shemtov

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

Citation: Burton v Mcgarrigle, 2023 ONLTB 72639

Date: 2023-11-09

File Number: LTB-L-044788-23

In the matter of: BASEMENT, 37 BOLLAND CRES AJAX
ON L1S3G8

Between: Audrey Annette Burton Landlord

And

Ryan Mcgarrigle Tenant

Audrey Annette Burton (the 'Landlord') applied for an order to terminate the tenancy and evict Ryan Mcgarrigle (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 24, 2023.

The Landlord's Representative Jennifer Drago 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 \$1,500.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$49.32. This amount is calculated as follows: \$1,500.00 x 12, divided by 365 days.
5. The Tenant has paid \$1,500.00 to the Landlord since the application was filed.
6. The rent arrears owing to October 31, 2023 are \$8,500.00. At the hearing, the Tenant submitted that he made additional payments that were not accounted for by the Landlord

specifically for 4 months (May, June, July, August) by sliding money under the door. He stated he could submit evidence of the payments.

7. I provided the Tenant an opportunity to submit the evidence by October 24, 2023 at 11:59pm and also provided the Landlord an opportunity to respond. The Tenant submitted no evidence of these alleged rent payments by the deadline. Therefore, I cannot find these payments were made.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. There is no last month's rent deposit.
10. 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 postpone the eviction until December 15, 2023 pursuant to subsection 83(1)(b) of the Act. The Tenant has made some rent payments since the application was filed and the arrears are also not excessive, so it is not unfair to delay the eviction 3 weeks to provide them some more time to void this order and preserve their tenancy or to find another place to live.
11. At the hearing, the Tenant suggested a payment plan for only \$3,000 rather than \$8,500 and for arrears payments of \$300 per month. I did not accept the Tenant's submissions that he made the payments for the other months claimed so the arrears are \$8,500. This would result in payment plan having a 28-month term which is an unreasonably long period of time.
12. The Tenant is currently unemployed. He testified that he is currently on a waiting list for a unionized position. He testified that he was previously number 300 and now he is number 2 or 3. When the Landlord's Representative asked him how he intends to pay the rent for November in one week or any subsequent month if he is not called on the waiting list, the Tenant stated that he *could* borrow money from friends. This was framed as a possibility rather than an actual plan that he had.
13. I find that the Tenant is solely relying on being called back on a waiting list for a position he may or may not receive and that November's rent is unlikely to be paid. The Tenant has no plan beyond the waiting list to pay for November rent or any subsequent month. In these circumstances, a payment plan is not feasible or fair to the Landlord especially considering the length of the 28-month term.
14. The Tenant has also only paid the Landlord \$1,500 since the application was filed while the new rent that has come due since then is \$6,000. This further supports a payment plan not being feasible in the circumstances.

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:**
 - \$10,186.00 if the payment is made on or before November 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$11,686.00 if the payment is made on or before December 15, 2023. 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 December 15, 2023 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 December 15, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$8,369.68. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$49.32 per day for the use of the unit starting October 25, 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 December 15, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 16, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 15, 2023, then starting December 16, 2023, 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 December 16, 2023.

November 9, 2023

Date Issued

Elan Shemtov

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 June 16, 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 November 30, 2023

Rent Owing To November 30, 2023	\$11,500.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,500.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
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 the Tenant must pay to continue the tenancy	\$10,186.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 15, 2023

Rent Owing To December 31, 2023	\$13,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,500.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
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 the Tenant must pay to continue the tenancy	\$11,686.00

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

Rent Owing To Hearing Date	\$9,683.68
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,500.00

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	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
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	\$8,369.68
Plus daily compensation owing for each day of occupation starting October 25, 2023	\$49.32 (per day)