



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

**Citation:** 485 Kingston Rd. Limited v McCardle, 2023 ONLTB 67913

**Date:** 2023-10-25

**File Number:** LTB-L-000556-22

**In the matter of:** 106, 485 KINGSTON RD  
TORONTO ON M4L1V6

**Between:** 485 Kingston Rd. Limited Landlord

**And**

Tracy Elizabeth McCardle Tenant

485 Kingston Rd. Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Tracy Elizabeth McCardle (the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes (L1 Application); and
- the Tenant has been persistently late in paying the Tenant's rent (L2 Application).

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

This application was first heard by videoconference on June 29, 2022. The Landlord's representative Sabrina Sciulli, the Landlord's agent Mihaela Chireulescu, and the Tenant attended this hearing. The Tenant received Tenant Duty Counsel services as well as mediation services before the start of the hearing. After the Landlord provided evidence for the L1 application the Tenant prematurely exited the videoconference due to technical issues, and was unable to re-join the videoconference. The hearing was therefore adjourned.

The adjourned hearing was heard by videoconference on October 4, 2023. The Landlord's representative, Sabrina Sciulli, and the Tenant attended this hearing. Tenant Duty Counsel and mediation services were not available before the adjourned hearing. The Tenant did not request these services at the start of the hearing.

**Determinations:**

**L1 Application – Non-Payment of Rent**

1. The Landlord served the Tenant with a valid Notice to End the 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 \$1,241.07. It is due on the 1st day of each month.
4. Based on the monthly rent, the daily rent/compensation is \$40.80. This amount is calculated as follows: \$1,241.07 x 12, divided by 365 days.
5. The Tenant has paid \$14,899.96 to the Landlord since the application was filed.
6. The rent arrears owing to October 31, 2023 are \$13,226.98. The Tenant agreed that these arrears are owed to the Landlord.
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 \$1,210.80 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.
9. Interest on the rent deposit, in the amount of \$37.50 is owing to the Tenant for the period from January 1, 2022 to October 4, 2023.

#### Relief from Eviction

10. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

#### Landlord's Evidence

11. The Landlord's representative submitted that the Landlord made multiple attempts to establish a plan with the Tenant for the payment of arrears, but in February 2022 the Tenant advised the Landlord that she did not have the financial capacity to pay for the arrears. The representative noted further that another letter was sent to the Tenant on September 27, 2023, offering a payment plan, but there was no response from the Tenant regarding this offer.
12. The Landlord's agent, Mihaela Chireulescu, testified that she left multiple messages with the Tenant to collect the rent, but the Tenant advised her that she had no money to pay the rent and was seeking financial aid.

#### Tenant's Evidence

13. The Tenant testified that she agrees that she has rent arrears as submitted by the Landlord's representative; however, she was not able to pay her rent as a result of on-going financial hardships. The Tenant explained that her part-time work at Loblaws has been inconsistent as a result of her numerous health issues, to include bells palsy and diabetes; however, she was hopeful that her work shifts and employment income would increase as her health improved.

14. The Tenant testified further that with her government pension and social assistance her monthly income is approximately \$1,580.00. She noted that currently her employment income is inconsistent; however, her earnings as a cashier at Loblaws will supplement her existing pension income, and will assist her in paying her rent. The Tenant acknowledged that she has approximately \$225.00 in monthly expenses in addition to food expenses.
15. The Tenant also confirmed that her monthly rent is \$1241.07, and it is due on the first day of each month. The Tenant testified that she used her monthly government pension income to first pay for her monthly expenses, such as telephone costs and food, before trying to pay the rent.
16. The Tenant stated that she has no family or friends to support her financially or with alternate accommodations. She stated further that she has no money to move and no where to go, and for these reasons she has not looked for alternate accommodations. The Tenant asserted that she has many medical issues to contend with, including depression, and this has made it difficult for her to work, earn sufficient money to pay the rent, and to prepare for this hearing.

#### Analysis

17. On the basis of the evidence provided, I am satisfied that the Landlord attempted to negotiate a repayment plan with the Tenant through consistent communication with the Tenant; however, I find that with insufficient income, the Tenant was unable to offer the Landlord any payment of the arrears through a plan.
18. On the basis of the evidence provided, I accept that the Tenant's health issues have resulted in her loss of employment income, and that her current pension, social assistance and employment income is insufficient to consistently pay her rent and other living expenses. I am satisfied that since December 2021 the Tenant has accrued significant rent arrears of \$13,226.98, and with no firm prospects to appreciably increase her monthly income, I find that the Tenant does not have the financial capacity to repay these arrears through a payment plan. For these reasons, I find that offering the Tenant conditional relief through an imposed arrears payment plan, or postponing the termination of the tenancy, would result in undue financial hardship for the Landlord. Accordingly, I find that it would be unfair to the Landlord to grant the Tenant with eviction relief.

#### **L2 Application – Persistent Late Payment of Rent**

19. The Landlord served the Tenant with a valid Notice to End the Tenancy at the End of the Term (N8 Notice) for persistently paying the rent late. The date of tenancy termination in this notice was February 28, 2022. I am satisfied that this N8 notice was properly served and complied with section 58 of the Act.
20. The Landlord filed this L2 application with the Board on January 5, 2022. The Tenant was in possession of the rental unit on the day of filing, and remains in possession of the rental unit as of the day of this hearing.
21. On the basis of the evidence provided, I find that the Tenant persistently failed to pay the rent on the date it was due – the first day of each month. The Landlord's representative submitted that over the 12-month period of January 2021 to December 2021, the Tenant

paid the rent late every month. The Landlord submitted a rent ledger of these late rent payments. The Tenant agreed that she paid the rent late for every month in 2021.

22. The Landlord's representative submitted further that the Landlord advised the Tenant regarding the late rent payments; however, the Tenant continued to pay the rent late, causing financial hardship for the Landlord. The representative noted that since the Landlord filed the L2 application, the Tenant paid the rent late for every month in 2022, and paid the rent late six times in 2023 – to include the months of January, May, June, July, August, and September. The Landlord submitted a rent ledger of these late rent payments.
23. The Tenant confirmed that she paid the rent late for every month in 2022, but she was unable to confirm what rent payments in 2023 were on-time or late given that she did not have access to her money order rent payment slips at the hearing. The Tenant asserted that she is now able to pay her rent on-time given her current sources of income.

### Relief from Eviction

24. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'). Given that the Tenant never paid the rent on-time for two years, from January 2021 to December 2022, I am satisfied that the Tenant's complete relief from eviction would be unfair to the Landlord. However, on the basis that in 2023 there has been some improvement in the Tenant's timely payment of rent, and that the late payments are consistently only a couple of days late, I 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.

### **It is ordered that:**

#### **L1 Application – Non-Payment of Rent**

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:**
  - \$13,412.98 if the payment is made on or before October 31, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$14,654.05 if the payment is made on or before November 5, 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 November 5, 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 November 5, 2023.**

5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$11,086.81. 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 \$40.80 per day for the use of the unit starting October 5, 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 November 5, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 6, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 5, 2023, then starting November 6, 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 November 6, 2023.

**L2 Application – Persistent Late Payment of Rent**

10. If the Tenant voids the L1 portion of this order in accordance with paragraph 2 above, the tenancy shall continue on the following terms.
11. The Tenant shall pay to the Landlord the lawful monthly rent on or before the first day of every month for the period of November 2023 to October 2024.
12. If the Tenant fails to make any one of the payments in paragraph 11 above, the Landlord may apply under section 78 of the Act, within 30 days of the breach and without notice to the Tenant, for an order terminating the tenancy and evicting the Tenant.

**October 25, 2023**  
**Date Issued**

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Frank Ebner  
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 May 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.

**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 October 31, 2023**

Rent Owing To October 31, 2023	\$28,126.94
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	- \$14,899.96
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$13,412.98</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before November 5, 2023**

Rent Owing To November 30, 2023	\$29,368.01
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	- \$14,899.96
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$14,654.05</b>

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

Rent Owing To Hearing Date	\$27,049.07
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	- \$14,899.96
<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	- \$1,210.80
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$37.50
<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00

<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$11,086.81</b>
Plus daily compensation owing for each day of occupation starting October 5, 2023	\$40.80 (per day)