



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

**Citation:** 10 Watercress Court v Facey, 2023 ONLTB 69513

**Date:** 2023-10-20

**File Number:**  
LTB-L-041130-23

**In the matter of:** 07, 10 WATERCRESS CRT  
KITCHENER ON N2E3S8

**Between:** 10 Watercress Court Landlord

**And**

Ricardo Facey Tenant

10 Watercress Court (the 'Landlord') applied for an order to terminate the tenancy and evict Ricardo Facey (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 11, 2023.

Only the Landlord's Representative, Alethia Hall, attended the hearing.

As of 2:57pm, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

### **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 \$1,251.86. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$41.16. This amount is calculated as follows: \$1,251.86 x 12, divided by 365 days.
5. The Tenant has paid \$7,259.00 to the Landlord since the application was filed.
6. The rent arrears owing to October 31, 2023, are \$41.84.
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 \$1,251.86 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 \$24.35 is owing to the Tenant for the period from January 1, 2023, to October 11, 2023.
10. Section 83(2) of the Act states:

(2) If a hearing is held, the Board shall not grant the application unless it has reviewed the circumstances and considered whether or not it should exercise its powers under subsection (1).

11. Section 83(1) of the Act states:

83 (1) Upon an application for an order evicting a tenant, the Board may, despite any other provision of this Act or the tenancy agreement,

(a) refuse to grant the application unless satisfied, having regard to all the circumstances, that it would be unfair to refuse; or

(b) order that the enforcement of the eviction order be postponed for a period of time.

12. Even though the Tenant was not present, it is evident by the Tenant's payment towards the arrears that the Tenant wants to preserve the tenancy. The arrears are now less than 5% of the monthly rent. However, the Tenant still owes \$41.84 in arrears and the \$186.00 filing fee for a total of
13. Although I find that it would be unfair to deny the Landlord's application, I find that it would not be unfair to delay the eviction date to November 30, 2023, to give the Tenant more time to pay the arrears and filing fee and preserve the tenancy.
14. 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 November 30, 2023, pursuant to subsection 83(1)(b) of the Act.

**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:**
  - \$227.84 if the payment is made on or before October 31, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$1,479.70 if the payment is made on or before November 30, 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 30, 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 30, 2023**
5. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the arrears of rent, compensation and the cost of filing the application the Landlord is entitled to by \$2,032.38. See Schedule 1 for the calculation of the amount owing. However, the Landlord is authorized to deduct from the amount owing to the Tenant \$41.16 per day for compensation for the use of the unit starting October 12, 2023, until the date the Tenant moves out of the unit.
6. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
7. If the unit is not vacated on or before November 30, 2023, then starting December 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. 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 1, 2023.

**October 20, 2023**

**Date Issued**

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Robert Brown  
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 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 October 31, 2023**

Rent Owing To October 31, 2023	\$7,300.84
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	- \$7,259.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$227.84</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 30, 2023**

Rent Owing To November 30, 2023	\$8,552.70
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	- \$7,259.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$1,479.70</b>

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

Rent Owing To Hearing Date	\$6,316.83
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	- \$7,259.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,251.86
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$24.35
<b>Total amount owing to the Landlord</b>	<b>\$(2,032.38)</b>
Plus daily compensation owing for each day of occupation starting October 12, 2023	\$41.16 (per day)