



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

**Citation:** Inch v Gaudette, 2023 ONLTB 65424

**Date:** 2023-10-03

**File Number:** LTB-L-056872-22

**In the matter of:** 3, 723 ST. CLAIR ST  
SUDBURY ON P3E4G9

**Between:** Andrew Inch Landlord

**And**

Sherry Gaudette Tenant

Andrew Inch (the 'Landlord') applied for an order to terminate the tenancy and evict Sherry Gaudette (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes ('L1 Application').

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Tenant has been persistently late in paying the Tenant's rent ('L2 Application').

This application was heard by videoconference on September 20, 2023.

Only the Landlord's legal representative, Angie Gravelle ('AG'), attended the hearing.

As of 9:42 a.m., 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:**

#### *L1 Application*

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 \$800.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$26.30. This amount is calculated as follows: \$800.00 x 12, divided by 365 days.
5. The Tenant has paid \$2,260.00 to the Landlord since the application was filed.
6. The rent arrears owing to September 30, 2023 are \$8,940.00.
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 \$800.00 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.
9. Interest on the rent deposit, in the amount of \$55.04 is owing to the Tenant for the period from May 1, 2019 to September 20, 2023.

### *L2 Application*

10. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy.
11. The Tenant was in possession of the rental unit on the date the application was filed.
12. N8 Notice of Termination
13. On September 13, 2022, the Landlord gave the Tenant an N8 notice of termination. The notice of termination alleges that the Tenant paid the rent late for every month from February 2022 to September 2022, except for the month of March 2022.
14. The uncontested evidence before me was that the Tenant failed to pay the rent by the date it was due for 7 out of the 8 months From February 2022 to September 2022. The only month in this period for which rent was paid by the date it was due was March 2022.
15. The Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the 1st day of each month. The rent has been paid late 7 times in the 8 months immediately preceding service of the N8 notice.

### *Relief from Eviction*

16. The evidence before me was that the rent was either paid late or not at all for each of the 12 months since the N8 notice was served.
17. AG said that the Landlord relies on the rent being paid in full and on time to satisfy operating costs for the property. She emphasized that the Landlord is an individual, and to

her knowledge, the residential complex is the Landlord's only rental property. She said it contains 3 units, and the Landlord lives in one of them.

18. AG said that a letter from her office was sent to the Tenant with the N4 notice, inviting him to reach out to the AG's office to arrange a payment plan. She said that she also emailed the Tenant a copy of the notice of hearing on June 15, 2023 and the email again invited the Tenant to contact AG's office to discuss a payment plan. AG said that she again emailed the Tenant on September 5, 2023 to provide disclosure for today's hearing, again inviting the Tenant to contact her to discuss a payment plan. Despite these efforts, AG said the Tenant has not contacted her office.
19. AG was not aware of any other circumstances that should be considered with respect to whether eviction should be delayed or denied.
20. 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.

**It is ordered that:**

1. Pursuant to the L2 Application, the tenancy between the Landlord and Tenant is terminated. The Tenant must move out of the rental unit on or before October 14, 2023.
2. The Tenant shall pay the Landlord \$7,996.96. 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.
3. The Tenant shall also pay the Landlord compensation of \$26.30 per day for the use of the unit starting September 21, 2023 until the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlord the full amount owing on or before October 14, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 15, 2023 at 7.00% annually on the balance outstanding.
5. If the unit is not vacated on or before October 14, 2023, then starting October 15, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 October 15, 2023.

**October 3, 2023**  
**Date Issued**

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Mark Melchers

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 April 15, 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 because the tenancy is terminated**

Rent Owing To Hearing Date	\$10,926.00
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	- \$2,260.00
<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	- \$800.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$55.04
<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>\$7,996.96</b>
Plus daily compensation owing for each day of occupation starting September 21, 2023	\$26.30 (per day)

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