



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Royal York Gardens 1141 Royal York Road v Mcaleer, 2023 ONLTB 59588

**Date:** 2023-09-01

**File Number:** LTB-L-031189-23

**In the matter of:** 903, 1141 ROYAL YORK RD  
ETOBICOKE ON M9A4A9

**Between:** Royal York Gardens 1141 Royal York Road Landlord

**And**

Christopher J Mcaleer Tenant

Royal York Gardens 1141 Royal York Road (the 'Landlord') applied for an order to terminate the tenancy and evict Christopher J Mcaleer (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on August 17, 2023.

The Landlord's legal representative Sabrina Sciulli and the Tenant attended the hearing.

### **Determinations:**

#### Preliminary Issues:

1. At the hearing, the Tenant wanted to raise section 82 issues for me to consider as to the reasons why he had not paid rent.
2. The Landlord's representative said the Tenant's disclosure was provided with short notice, sent late evening on Friday, August 11, 2023 which she did not have access to until Monday August 14, 2023. The Tenant's disclosure package is substantial with several allegations.
3. The Tenant acknowledged receipt of the Notice of Hearing deemed served June 26, 2023. He said that it took significant time to prepare the package and that is the reason for the late submission. The Tenant confirmed he has not filed any tenant applications.
4. Pursuant to section 82 of the Act, a Tenant is permitted to raise any issue that could be the subject of an application if the Tenant complies with disclosure requirements or provides an

explanation satisfactory to the Board explaining why the Tenant could not comply. The Tenant did not meet the disclosure requirements as per Board Rule 19 and in my view, the Tenant did not provide a satisfactory response as to why he did not comply.

5. I also queried the Tenant on issues that may meet the requirement of s.83(3)(a) and based on the evidence before the Board and on a balance of probabilities, I do not find the alleged breaches of noise and construction disruption rises to the level required under this mandatory review provision.
6. Following the party submissions, I decided to proceed with the Landlord's application as the Tenant has opportunity for remedy by filing his own applications. I also considered the Tenant's acknowledgement that the reason he withheld rent is due to issues surrounding the tenancy and as a result, I find the Landlord will be further prejudiced if the matter is delayed. I explained to the Tenant that his self-help measures were unreasonable and contrary to the Act.
7. At the hearing, the Tenant disputed the amount of arrears owed to the Landlord. The Tenant asserts that he was not provide proper notice of rent increase and the amount charged is not permitted.
8. I stood the matter down to allow the parties time to gather evidence regarding the rent increases. The Landlord's representative reviewed the recent history of rent increases including dates and details of the notice and method of service. The Landlord's representative said the Tenant was provided each notice of rent increase by the Super Intendant.
9. The Tenant said that he did not believe the notice(s) of rent increase were valid but did not provide further adequate submissions. The Tenant said he is filing a T1 application.
10. Based on the evidence before the Board and on a balance of probabilities, I find the Landlord served the Tenant with proper notice(s) of rent increase and the amounts claimed in the application reflect this accordingly.

#### The Landlord's Application

11. 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.
12. As of the hearing date, the Tenant was still in possession of the rental unit.
13. The lawful rent is \$2,417.06. It is due on the 1st day of each month.
14. Based on the Monthly rent, the daily rent/compensation is \$79.46. This amount is calculated as follows: \$2,417.06 x 12, divided by 365 days.
15. The Tenant has paid \$9,432.44 to the Landlord since the application was filed.

16. The rent arrears owing to August 31, 2023 are \$7,748.43.
17. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
18. The Landlord collected a rent deposit of \$2,358.11 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.
19. Interest on the rent deposit, in the amount of \$36.99 is owing to the Tenant for the period from January 1, 2023 to August 17, 2023.
20. The Landlord's representative said the Tenant chose to withhold the rent instead of seeking remedy by filing his own applications and his actions are unreasonable. The payment plan suggested by the Tenant at the hearing is lengthy and also unreasonable. The Landlord should be made whole and is seeking a standard order.
21. After a detailed financial analysis, the Tenant said he can afford to pay his rent and arrears and requested a payment plan. Again, he confirmed he can afford to pay his rent but made the choice to withhold the rent due to "all the issues with the Landlord."
22. The Tenant said that he has looked for alternative accommodation and has attended about 15 viewings but has not made any application. The Tenant did not provide input on a time frame for potential relief.
23. 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 September 30, 2023 pursuant to subsection 83(1)(b) of the Act. This slight delay will allow the Tenant sufficient opportunity to seek alternative housing arrangements.

**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:**
  - \$10,351.49 if the payment is made on or before September 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 September 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 September 30, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$4,473.09. 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 \$79.46 per day for the use of the unit starting August 18, 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 September 12, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 13, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before September 30, 2023, then starting October 1, 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 October 1, 2023.

**September 1, 2023**

**Date Issued**

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Dana Wren

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 April 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 September 12, 2023**

Rent Owing To September 30, 2023	\$19,597.93
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	- \$9,432.44
<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>\$10,351.49</b>

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

Rent Owing To Hearing Date	\$16,114.63
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	- \$9,432.44
<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	- \$2,358.11
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$36.99
<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>\$4,473.09</b>
Plus daily compensation owing for each day of occupation starting August 18, 2023	\$79.46 (per day)