



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Gauthier v Cloutier, 2023 ONLTB 50326

**Date:** 2023-07-20

**File Number:** LTB-L-011068-23

**In the matter of:** 3, 26 Connaught Street Chapleau  
ON P0M1K0

**Between:** Richard Gauthier Landlord

**And**

Jody Cloutier Tenant

Richard Gauthier (the 'Landlord') applied for an order to terminate the tenancy and evict Jody Cloutier (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on July 4, 2023. The Landlord 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 \$500.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$16.44. This amount is calculated as follows: \$500.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to July 31, 2023 are \$7,000.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.

9. The parties agree that the prior Landlord was Edward Neugebauer, who passed away on September 20, 2022. The current Landlord (Richard Gauthier) is the executor of Mr. Neugebauer's estate.
10. The Tenant disputed the amount of arrears owing arguing that he paid rent for the months of June and July 2022 in cash to the old Landlord. The Landlord disputed these payments being received and/or recorded and the Tenant provided no receipts of payment, bank records or confirmation from the Landlord that these payments were made.
11. In *Mauti v. Gibbs, 2019 ONSC 3355 (CanLII)*, the Divisional Court held at paragraph 27 that while the Landlord bears the burden of proof in a rent arrears application, it is difficult for a landlord to prove a negative (i.e. non-payment of rent). Therefore, ". . .while the ultimate persuasive burden never shifts, once a landlord denies receiving funds, the tenant will have an evidentiary burden or a chance to advance some evidence to positively prove that he or she paid rent."
12. Based on the evidence before the Board, I find that the Tenant owes arrears of rent for the months of June and July 2022. As stated above, the Landlord disputed receiving these payments and the Tenant provided insufficient evidence to support these payments being made.

**Relief from eviction:**

13. 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 August 31, 2023 pursuant to subsection 83(1)(b) of the Act.
14. I have concerns with the credibility of the Tenant and his testimony. The Tenant initially stated that he did not pay any rent since August 2022 because the new Landlord failed to come to his rental unit and collect the rent. When the new Landlord stated that he collects rent payments from all Tenants via interac E-transfer, the Tenant changed his story and stated that the new Landlord did not provide him with the correct email address to transfer the funds. At the hearing, I asked the Landlord to confirm his email address and asked the Tenant if he would then be able to pay the funds that he claimed he had and were never collected, the Tenant then changed his testimony again stating that he did not have the funds with him as he has been out of work since November 2022 and as such, was not in a position to pay the rent.
15. The Tenant testified that he has recently resumed employment and proposed a repayment plan in which he would pay his monthly rent on time, plus an additional \$500.00 towards the arrears of rent. The Landlord opposed the repayment plan.
16. In my view, I find it would be unfair to impose a repayment plan on the Landlord. The arrears of rent are substantial and the Tenant has made no payments to the Landlord for approximately 14 months. I am however mindful to the fact that the Tenant has resided in the rental unit for approximately 9 years and as such, find it would not be unfair to delay

termination of tenancy to allow the Tenant some additional time to secure alternate housing.

**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:**
  - \$7,186.00 if the payment is made on or before July 31, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

- \$7,686.00 if the payment is made on or before August 31, 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 August 31, 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 August 31, 2023**
  5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$6,751.76. 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 \$16.44 per day for the use of the unit starting July 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 July 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 1, 2023 at 6.00% annually on the balance outstanding.
  8. If the unit is not vacated on or before August 31, 2023, then starting September 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 September 1, 2023.

**July 20, 2023**

**Date Issued**

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Fabio Quattrociochi

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 March 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 July 31, 2023**

Rent Owing To July 31, 2023	\$7,000.00
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	- \$0.00
<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>\$7,186.00</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before August 31, 2023**

Rent Owing To August 31, 2023	\$7,500.00
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	- \$0.00
<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>\$7,686.00</b>

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

Rent Owing To Hearing Date	\$6,565.76
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	- \$0.00
<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	- \$
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord</b>	<b>\$6,751.76</b>
Plus daily compensation owing for each day of occupation starting July 5, 2023	\$16.44 (per day)