



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

Citation: McRae v Tucker, 2023 ONLTB 49116

Date: 2023-07-13

File Number: LTB-L-025948-23

In the matter of: Upper, 138 Forestry Road
Long Lac Ontario P0T2A0

Between: Derry McRae Landlord

And

Chris Tucker Tenant

Derry McRae (the 'Landlord') applied for an order to terminate the tenancy and evict Chris Tucker (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 22, 2023.

Only the Landlord attended the hearing.

As of 10:39 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:

Method and date of service of N4

1. The Landlord testified that he had sent the N4 notice to the Tenant via regular mail on November 28, 2022. He had made a mistake in filling the Certificate of Service document. He said he may have proof of his payment to Canada Post but he did not find the same.
2. The incorrect date on the COS does not invalidate the N4. Pursuant to section 59(1) of the Residential Tenancies Act (the 'Act'), the termination date on the N4 must be at least 14 days after service. Based on the uncontested viva voce evidence of the Landlord, I find that the N4 notice was sent to the Tenant on November 28, 2022 deemed served on

December 3, 2022 which is 14 days before the date of termination. As such I find that the N4 is valid for proper service.

3. 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.
4. As of the hearing date, the Tenant was still in possession of the rental unit.
5. The lawful rent is \$1,000.00. It is due on the 1st day of each month.
6. Based on the Monthly rent, the daily rent/compensation is \$32.88. This amount is calculated as follows: \$1,000.00 x 12, divided by 365 days.
7. The Tenant has paid \$5000.00 to the Landlord since the application was filed.
8. The rent arrears owing to June 30, 2023 are \$5,700.00.
9. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
10. There is no last month's rent deposit.
11. 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.
12. The Landlord testified that the Tenant has been paying rent regularly since the application was filed but has made no effort to pay the rent arrears from before that. He testified that he was considerate when the Tenant was dealing with health issues but now he is back to work and makes good money but still has not reached out to the Landlord for a payment plan.

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:**
 - \$6,901.00 if the payment is made on or before July 24, 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 July 24, 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 July 24, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$5,624.36. 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 \$32.88 per day for the use of the unit starting June 23, 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 24, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 25, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before July 24, 2023, then starting July 25, 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 July 25, 2023.

July 13, 2023

Date Issued

Sheena Brar

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 January 25, 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 24, 2023

Rent Owing To July 31, 2023	\$11,700.00
Application Filing Fee	\$201.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$5,000.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$6,901.00

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

Rent Owing To Hearing Date	\$10,423.36
Application Filing Fee	\$201.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$5,000.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$5,624.36
Plus daily compensation owing for each day of occupation starting June 23, 2023	\$32.88 (per day)