



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

Citation: Randy Kerr v Chad Wickens, 2023 ONLTB 40031

Date: 2023-05-29

File Number: LTB-L-010542-23

In the matter of: apartment above garage, 615 County Road 3 BELLEVILLE
ON K8N4Z1

Between: Randy Kerr Landlord

And

Chad Wickens Tenant

Randy Kerr (the 'Landlord') applied for an order to terminate the tenancy and evict Chad Wickens (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on May 8, 2023.

The Landlord and the Tenant attended the hearing.

The Tenant spoke with Duty Counsel prior to the hearing.

Determinations:

Preliminary Issues

1. The Tenant had evidence on the portal but no form setting out any section 82 issues and the requested remedy was filled out as set out in the Notice of Hearing. When asked about this, the Tenant testified that he did not see the part about having to fill out a form. He emailed the evidence in but he has reading issues, so he did not see the other part.
2. When this member explained to the Tenant that the matter was proceeding today on just the arrear's issue, the Tenant requested an adjournment because he is not able to read properly. He is currently out of work and has financial stability issues, but it is possible he could get help with paying first and last rent.
3. The Landlord responded that he wanted the matter to proceed today; the Tenant has not paid anything since November 2022 which is affecting the Landlord's finance. The

Landlord testified that he is renting the unit to supplement his income, he needs the rental income. The Tenant can file his own application, but he wants to proceed today so if the Tenant cannot pay the arrears, then he can get the unit back and rent it to someone who can.

4. For the reason that follow, the Tenant request to adjourn is denied. The Tenant testified that he may be able to get help with coming up with a first and last month's rent, this is not the same as paying the future rent to this Landlord; it is extremely prejudicial to the Landlord to grant an adjournment when there is no guarantee of future rent being paid. Although the Tenant has difficulties reading, this does not affect today's hearing; he will have to find assistance to fill out his own application at a later date.
5. This member raised with the Landlord that there were two N4 notices uploaded; the first one, that the application is based on, is dated January 13, 2023 for \$2,400.00 and has a termination date of January 31, 2023; the second is dated April 3, 2023 for \$7,100.00 and has a termination date of April 18, 2023. Generally, a second N4 would be considered a replacement, thus voiding the first N4, however, in this case the Landlord served the second N4 more than two-months after the L1 application was filed on the first N4. Therefore, as the hearing process was already started when he served the second N4, I consider it to be irrelevant to the case at hand; it does not affect when the Landlord filed the application because the application was already filed.

Merits

6. 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.
7. As of the hearing date, the Tenant was still in possession of the rental unit.
8. The lawful rent is \$1,700.00. It is due on the 1st day of each month.
9. Based on the Monthly rent, the daily rent/compensation is \$55.89. This amount is calculated as follows: \$1,700.00 x 12, divided by 365 days.
10. The Tenant has not made any payments since the application was filed.
11. The rent arrears owing to May 31, 2023 are \$8,800.00.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
13. The Landlord collected a rent deposit of \$1,700.00 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.

14. Interest on the rent deposit, in the amount of \$43.32 is owing to the Tenant for the period from May 2, 2022 to May 8, 2023.
15. The Landlord requested a standard order 11-day voidable order; he has discussed the arrears and repayment a number of times with the Tenant but nothing came out of it and nothing has been paid.
16. The Tenant testified that no actual repayment plan was offered. The Tenant then testified that he never received the update form. When the Landlord responded that he placed it in the Tenant's mailbox on May 1, 2023, plus uploaded it to the portal, the Tenant testified that he has not been on the portal because he has not glasses.
17. I have considered all 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. I accept that the Landlord had discussions with the Tenant about the rental arrears, the Tenant could have offered a repayment plan during any of those discussions but did not, and there have been not rent payments made to the Landlord since the application was filed. This tenancy is just over a year old, there are currently over five months of rent owing, and the Landlord needs the rental payments to supplement his own income; to extend the termination date would cause further financial strain on this Landlord. As for the update sheet, I accept that the Landlord placed it in the Tenant's mailbox, as such it was properly served. The Tenant not having glasses and therefore being unable to access the portal is unfortunate, but does not affect my finding that the update was served, further, the Tenant did not dispute the arrears and would know that he has not been making rent payments which means the amount owing is going to reflect this.

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:**
 - \$8,986.00 if the payment is made on or before May 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$10,686.00 if the payment is made on or before June 9, 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 June 9, 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 June 9, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$5,957.21. 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 \$55.89 per day for the use of the unit starting May 9, 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 June 9, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 10, 2023 at 6.00% annually on the balance outstanding.
8. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
9. If the unit is not vacated on or before June 9, 2023, then starting June 10, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 June 10, 2023.

May 29, 2023

Date Issued

Diane Wade

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 December 10, 2023 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 May 31, 2023

Rent Owing To May 31, 2023	\$8,800.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	\$8,986.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before June 9, 2023

Rent Owing To June 30, 2023	\$10,500.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	\$10,686.00

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

Rent Owing To Hearing Date	\$7,514.53
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	- \$1,700.00
Less the amount of the interest on the last month's rent deposit	- \$43.32

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	\$5,957.21
Plus daily compensation owing for each day of occupation starting May 9, 2023	\$55.89 (per day)