



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

**Citation:** Tavernese v Mitchell, 2023 ONLTB 34178

**Date:** 2023-05-05

**File Number:** LTB-L-051070-22

**In the matter of:** 56 LACEY AVE  
YORK ON M6M3L7

**Between:** Marco Tavernese Landlord

**And**

Isaiah (unknown) Tenants  
Mahala Mitchell and Mitzie Mclarty

Marco Tavernese (the 'Landlord') applied for an order to terminate the tenancy and evict Isaiah (unknown) Mahala Mitchell and Mitzie Mclarty (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on March 27, 2023.

The Landlord, is wife Katrina, and the Tenant Mitzie Mclarty 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 \$2,100.00. It is due on the 15th day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$69.04. This amount is calculated as follows: \$2,100.00 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 March 31, 2023 are \$23,606.62.

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 \$2,100.00 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 \$125.74 is owing to the Tenant for the period from December 3, 2018 to March 27, 2023.
10. 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 May 31, 2023 pursuant to subsection 83(1)(b) of the Act. This extension of time accounts for both parties' evidence about their financial circumstances. The Landlord testified that the arrears are causing him significant financial hardship because the Tenant stopped paying rent in September 2022, that his rental reserves are completely depleted and that the Tenant has not been communicating with the Landlord. The financial obligations are a huge burden on the Landlord as he must pay for the mortgage payments on the rental property and cover the utilities as those have not been paid by the Tenant as required under the rental agreement. The Tenant testified that although she is currently unemployed and receiving Ontario Works, she was previously self employed in a capacity of a daycare provider but lost her clientele during COVID. Currently the Tenant has a total monthly income of \$1,095.00 and submitted that she is not eligible to enter the shelter system as a housing option and has no family or friends to rely on for assistance or to move in with even on a temporary basis. She has two adult children living with her, only one is working and is able to provide some financial assistance to the household. The extension of time will provide the Tenants time secure funds and find a new place to live. Since the Landlord is holding a rent deposit, the arrears should not increase further. At this time, a payment plan would not be appropriate since the amount the Tenant receives from Ontario Works (\$1,095.00) is not enough to cover the monthly rent, let alone the arrears.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$27,510.00 if the payment is made on or before May 31, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants has paid the full amount owing as ordered plus any additional rent that became due after May 31, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.

4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before May 31, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$21,290.72. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$69.04 per day for the use of the unit starting March 28, 2023 until the date the Tenants moves out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before May 16, 2023, the Tenants will start to owe interest. This will be simple interest calculated from May 17, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before May 31, 2023, then starting June 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 June 1, 2023.

2023 ONLTB 34178 (CanLIJ)

**May 5, 2023**

**Date Issued**

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 Alicia Johnson  
 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 1, 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.

\*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

**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	\$27,324.00
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>\$27,510.00</b>

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

Rent Owing To Hearing Date	\$23,330.46
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	- \$2,100.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$125.74
<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>\$21,290.72</b>
Plus daily compensation owing for each day of occupation starting March 28, 2023	\$69.04 (per day)