



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

**Citation:** McIntosh v Pellerin, 2023 ONLTB 34813

**Date:** 2023-05-03

**File Number:** LTB-L-053275-22

**In the matter of:** Unit A, 54 Archange St  
Fort Erie ON L2A 3K7

**Between:** Juliet McIntosh Landlord

**And**

Christine Thiel and Erik Pellerin Tenants

Juliet McIntosh (the 'Landlord') applied for an order to terminate the tenancy and evict Christine Thiel and Erik Pellerin (the 'Tenants') because the Tenants did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 30, 2023. The Landlord attended the hearing. As of 3:39 pm, the Tenants were 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.

### **Preliminary Issue:**

1. On December 12, 2022, the Landlord filed an amended application to reflect the correct address for the rental unit as to Unit A 54 Archange St. Fort Erie L2A 3K7 and not apartment A, 60 Atkins Circle, Brampton, ON. The rental unit address on the amended application matches the rental unit address on the N4 notice, which the Landlord stated was served on the Tenants on June 4, 2022.
2. The application is amended to reflect the correct address for the rental unit. I find there is no prejudice to the Tenants as the rental unit address on the amended application reflects the correct address for the rental unit and matches the rental unit address included on the N4 notice served on the Tenants.

### **Determinations:**

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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 Tenants were still in possession of the rental unit.
3. The lawful rent is \$1,850.00. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$60.82. This amount is calculated as follows: \$1,850.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to March 31, 2023 are \$18,500.00.
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 \$1,850.00 from the Tenants 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 \$44.48 is owing to the Tenant for the period from April 14, 2022 to March 30, 2023.
10. The Landlord attempted to negotiate a repayment of the arrears with the Tenants without success. The Landlord stated she spoke with the Tenant Christine Thiel on June 4, 2022 when she served the Tenants with the N4 notice and offered the Tenants the opportunity to enter into a payment plan for the arrears. The Landlord stated a payment plan was agreed to and it was to commence on June 10, 2022. No payments were made and the Landlord stated she proposed a payment again on June 28, 2022. The Landlord stated the Tenants replied by email on June 29, 2022, advising they would be making payments.
11. On July, 20, 2022, the Landlord stated that the Tenants advised the Landlord that partial payments would be issued to the Landlord every Friday until the Tenants caught up on the arrears. No payments were received. The Landlord stated that the Tenant Erik Pellerin offered to make payments again October 2022. The Landlord stated a payment plan was last discussed in November 2022 and Erik Pellerin offered to pay at least half of the amount owed as a lump sum payment in December 2022. No payments were received by the Landlord.
12. 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. The Tenants have made no payments since the application was filed and the arrears are significant. I accept the Landlord's testimony that numerous attempts were made with the Tenants to negotiate a repayment of the arrears and I find that the Tenants did not make any payments towards the arrears.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenant voids this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$22,386.00 if the payment is made on or before May 14, 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 have paid the full amount owing as ordered plus any additional rent that became due after May 14, 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 14, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$16,766.12. 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 \$60.82 per day for the use of the unit starting March 31, 2023 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before May 14, 2023, the Tenants will start to owe interest. This will be simple interest calculated from May 15, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before May 14, 2023, then starting May 15, 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 May 15, 2023.

**May 3, 2023**  
**Date Issued**

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Kimberly Parish  
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 November 15, 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before May 14, 2023**

Rent Owing To May 31, 2023	\$22,200.00
Application Filing Fee	\$186.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$22,386.00</b>

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

Rent Owing To Hearing Date	\$18,474.60
Application Filing Fee	\$186.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,850.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$44.48
<b>Total amount owing to the Landlord</b>	<b>\$16,766.12</b>
Plus daily compensation owing for each day of occupation starting March 31, 2023	\$60.82 (per day)