



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

Citation: Smith v Maclean, 2023 ONLTB 30420

Date: 2023-04-05

File Number: LTB-L-050770-22

In the matter of: 511, 45 POND MILLS RD LONDON
ON N5Z4W5

Between: Kimberley M Smith Landlord

And

David Mcdowell and Laura Maclean Tenant

Kimberley M Smith (the 'Landlord') applied for an order to terminate the tenancy and evict David Mcdowell and Laura Maclean (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 30, 2023.

Only the Landlord attended the hearing.

As of 9:58 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:

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. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Tenant vacated the rental unit on November 15, 2022. Rent arrears are calculated up to the date the Tenant vacated the unit.
4. The lawful rent is \$1,300.00. It was due on the 15th day of each month.
5. The Tenant has paid \$2,700.00 to the Landlord since the application was filed.

6. The rent arrears owing to November 14, 2022 are \$1,300.00. The Landlord was not seeking the per-diem amount for November 15, 2022.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

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8. There is no last month's rent deposit. The Landlord testified that they had an agreement to apply it to July 2021 rent; the Landlord is now aware of the requirements under the Act that it can only be applied to the last month of the tenancy.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of November 15, 2022, the date the Tenant moved out of the rental unit
2. The Tenant shall pay to the Landlord \$1,486.00. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
3. If the Tenant does not pay the Landlord the full amount owing on or before April 16, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 17, 2023 at 6.00% annually on the balance outstanding.

April 5, 2023

Diane Wade

_____ **Date Issued**

Member, Landlord and Tenant Board

15 Grosvenor St, 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.

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**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay as the tenancy is terminated

Rent Owing To Move Out Date	\$4,042.74
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,700.00
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	\$1,528.74