



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

**Citation:** McKenzie Auction Company Ltd. v Gordon, 2023 ONLTB 28398

**Date:** 2023-03-30

**File Number:** LTB-L-045557-22

**In the matter of:** 353 CONRAD ST  
SARNIA ON N7T3K4

**Between:** McKenzie Auction Company Ltd. Landlord

**And**

Mike Gordon Tenant

McKenzie Auction Company Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Mike Gordon (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 13, 2023.

The Landlord's Representative David Price and the Tenant 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 \$1,090.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$35.84. This amount is calculated as follows: \$1,090.00 x 12, divided by 365 days.
5. The Tenant has paid \$2,700.00 to the Landlord since the application was filed.
6. The rent arrears owing to March 31, 2023 are \$10,590.00.

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 \$1,090.00 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 \$155.56 is owing to the Tenant for the period from May 1, 2014 to March 13, 2023.
10. The Tenant requested relief from eviction in the form of a payment plan. The Tenant testified that he recently returned to work after being in the hospital in January 2023 and February 2023, and can pay off the arrears at \$1,000.00 a month.
11. I am not satisfied that imposing a repayment plan would be fair in the circumstances because the Tenant has not proven on a balance of probabilities that he would abide by it and because of the length of time it would take to pay off the arrears.
12. I am not satisfied that the Tenant would abide by a repayment plan because of the large amount of outstanding arrears and because the Tenant has only paid \$2,700.00 in rent since the application was filed in August 2022. While I have considered the Tenant's testimony that he was in the hospital for two months and that prevented him from working, that period does not account for the 13-month period in which arrears have been accumulating between March 2022 and March 2023. Additionally, I have considered the Tenant's testimony that he has recently returned to work, but I also must consider the Tenant's payment history which does support that the Tenant will abide by a repayment plan.
13. I am also not satisfied that imposing a repayment plan would be fair in the circumstances because of the length of time it would take for the Tenant to pay off the arrears. The Tenant's proposed repayment plan would take nearly 11 months to pay off. An 11-month repayment plan coupled with the 12 months that the Tenant has already been in arrears means there would be nearly years in which the Landlord is without full payment of the rent.
14. 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 April 22, 2023 pursuant to subsection 83(1)(b) of the Act. This postponement will provide the Tenant with time to either pay off the arrears and/or find new living accommodations. I have declined to postpone the eviction any longer because of the significant amount of outstanding arrears.

**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:**
- \$10,776.00 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$11,866.00 if the payment is made on or before April 22, 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 April 22, 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 April 22, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$8,906.36. 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 \$35.84 per day for the use of the unit starting March 14, 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 April 10, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 11, 2023 at 5.00% annually on the balance outstanding.
8. If the unit is not vacated on or before April 22, 2023, then starting April 23, 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 April 23, 2023.

**March 30, 2023**

**Date Issued**

Amanda Kovats

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 October 23, 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 March 31, 2023**

Rent Owing To March 31, 2023	\$13,290.00
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	- \$2,700.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$10,776.00</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before April 22, 2023**

Rent Owing To April 30, 2023	\$14,380.00
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	- \$2,700.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$11,866.00</b>

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

Rent Owing To Hearing Date	\$12,665.92
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	- \$2,700.00
<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	- \$1,090.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$155.56
<b>Total amount owing to the Landlord</b>	<b>\$8,906.36</b>

Plus daily compensation owing for each day of occupation starting March 14, 2023	\$35.84 (per day)
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