



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

**Citation:** MCCLARY DISTRICT INC. v Henderson, 2023 ONLTB 27200

**Date:** 2023-03-24

**File Number:** LTB-L-046280-22

**In the matter of:** 1, 11 MCCLARY AVE  
LONDON ON N6C1P6

**Between:** MCCLARY DISTRICT INC. Landlord

**And**

Scott Henderson Tenant

MCCLARY DISTRICT INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Scott Henderson (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 14, 2023.

Only the Landlord's Legal Representative Bryan Rubin attended the hearing.

As of 9:56 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. Since the Tenant did not attend and the Landlord was prepared to proceed, the matter proceeded by way of an uncontested hearing pursuant to section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990.

### **Determinations:**

1. At the hearing the Landlord's Legal Representative relied on oral submissions and referred to documents to support their application.
2. 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.
3. As of the hearing date, the Tenant was still in possession of the rental unit.

4. The lawful rent was \$704.96 and increased to \$722.57 on January 1, 2023. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$23.76. This amount is calculated as follows:  $\$722.57 \times 12$ , divided by 365 days.
6. The Tenant has not made any payments since the application was filed.
7. The rent arrears owing to March 31, 2023 are \$8,512.35.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$535.00 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.
10. Interest on the rent deposit, in the amount of \$193.71 is owing to the Tenant for the period from January 2, 2003 to March 14, 2023.
11. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including whether the Landlord attempted to negotiate a payment agreement with the Tenant. The Landlord submitted that ongoing efforts were made to contact the Tenant to discuss a payment agreement, but the Tenant did not respond. I asked the Landlord if they were aware of any circumstances the Tenant may be experiencing that would make eviction unfair and they were aware of none. I find it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

**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:**
  - \$8,698.35 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$9,420.92 if the payment is made on or before April 4, 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 4, 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 4, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$7,579.71. 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 \$23.76 per day for the use of the unit starting March 15, 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 4, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 5, 2023 at 5.00% 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 April 4, 2023, then starting April 5, 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 April 5, 2023.

**March 24, 2023**

**Date Issued**

\_\_\_\_\_  
 John Cashmore  
 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 5, 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	\$8,512.35
------------------------------	------------

Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$8,698.35</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 4, 2023**

Rent Owing To April 30, 2023	\$9,234.92
Application Filing Fee	\$186.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$9,420.92</b>

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

Rent Owing To Hearing Date	\$8,122.42
Application Filing Fee	\$186.00
<b>Less</b> the amount of the last month's rent deposit	- \$535.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$193.71
<b>Total amount owing to the Landlord</b>	<b>\$7,579.71</b>
Plus daily compensation owing for each day of occupation starting March 15, 2023	\$23.76 (per day)