



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

**Citation:** Metcap Living Management Inc v Velyan, 2023 ONLTB 25725

**Date:** 2023-03-15

**File Number:** LTB-L-035257-22

**In the matter of:** 3, 501 SIXTH ST  
COLLINGWOOD ON L9Y1Z8

**Between:** Metcap Living Management Inc Landlord

**And**

Kimberley Velyan Tenant

Metcap Living Management Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Kimberley Velyan (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 1, 2023.

The Landlord did not attend the hearing but was represented by Michelle Forrester. The Tenant attended the hearing and was self-represented.

**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 \$1,250.00. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$41.10. This amount is calculated as follows: \$1,250.00 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 February 28, 2023 are \$12,500.00.
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 \$1,250.00 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 \$26.37 is owing to the Tenant for the period from March 31, 2022 to February 1, 2023.

Section 83 considerations

10. The Tenant does not dispute the arrears claimed by the Landlord. She fell into arrears in and around January 2022 when she left her job as a cleaner due to a workplace dispute. Although she was able to secure sustainable employment that would have allowed her to pay her rent, she decided to redirect her income to the care of her two sons who were suffering from undisclosed mental health and housing challenges of their own.
11. The Tenant's current monthly income is comprised of work as a cleaner and a Child Care Benefit which combined, is \$3,980.00. The Tenant summarized her expenses which, when applied against her monthly income, yields a surplus of approximately \$1,880.00 per month. In response to questioning posed by the Board about the reasons she had not paid her rent when she has had sufficient funds, the Tenant was not able to provide a clear answer.

Analysis

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. Although the Tenant currently has a source of income to address the arrears and to pay her rent as required, she has chosen not to pay her rent but to prioritize expenses related to other aspects of her life. As such, I am satisfied that this tenancy is non-viable and continuing it any further would be unduly prejudicial to the Landlord.

**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:**
  - \$13,936.00 if the payment is made on or before March 26, 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 March 26, 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 March 26, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$10,200.73. 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 \$41.10 per day for the use of the unit starting February 2, 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 March 26, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 27, 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 March 26, 2023, then starting March 27, 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 March 27, 2023.

**March 15, 2023**

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**Date Issued**  
Ramlochan

Emile

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 September 27, 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 March 26, 2023**

Rent Owing To March 31, 2023	\$13,750.00
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>\$13,936.00</b>

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

Rent Owing To Hearing Date	\$11,291.10
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	- \$1,250.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$26.37
<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>\$10,200.73</b>
Plus daily compensation owing for each day of occupation starting February 2, 2023	\$41.10 (per day)

