



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

Citation: 2305371 Ontario Inc. v Mccarrick, 2023 ONLTB 19230

Date: 2023-03-01

File Number: LTB-L-032416-22

In the matter of: 9, 4 GROSVENOR AVE S HAMILTON
ON L8M3K9

Between: 2305371 Ontario Inc. Landlord

And

Alexandria Mccarrick Tenants
Anthony Thompson

2305371 Ontario Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Alexandria Mccarrick (AM) and Anthony Thompson (AT) (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 31, 2023.

The Landlord's Agents Edward Leung and Regina Leung and the Tenants attended the hearing.

The Tenants wanted to speak with Tenant Duty Counsel, but none was available from Hamilton region. Mid hearing a Tenant Duty Counsel became available, but Tenants decided to proceed without speaking to the Tenant Duty Counsel.

Determinations:

1. The Tenant AT wanted an adjournment because he did not trust the Landlord's Agent Mr. Leung and wanted to verify the amounts on the L1/L9 update sheet to match what he has paid. He acknowledged that he did owe rent arrears, but he was not sure how much. He stated that Hamilton Housing Company has paid rent for him in the past, but he is not sure if they made any more payments on his behalf. The AT believes he has not paid since June 2022 but he did reach out to the Hamilton Housing Company in May 2022 so he is not sure if they made any payments after.

2. The Landlord's Agent RL testified that since they have not received any payments whatsoever from Hamilton Housing Company or from the Tenant since May 1, 2022.
3. I denied the adjournment request because the Tenant had time before the hearing to reach out to the company and even after the order is issued, the Tenant can rely on the amounts paid and if the balance of arrears owing comes down to zero the application is moot. The Tenant AM also stated that they plan to move out in the near future.
4. If after the hearing the Tenants obtain evidence that Hamilton Housing Company made payments directly to the Landlord after May 1, 2022, they should provide it to the Landlord who must deduct it from the balance owing.
5. 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.
6. As of the hearing date, the Tenant was still in possession of the rental unit.
7. The lawful rent is \$727.00. It is due on the 1st day of each month. AT contested the current lawful rent but based on the Notice of Rent Increase uploaded by the Landlord, I am satisfied that the rent was lawfully increased from \$719 to \$727 effective August 1, 2022. The Landlord's Agent Edward Leung testified that they had served the N1 on the Tenants on April 4, 2022.
8. Based on the Monthly rent, the daily rent/compensation is \$23.90. This amount is calculated as follows: $\$727.00 \times 12$, divided by 365 days.
9. The Tenant has not made any payments since the application was filed.
10. The rent arrears owing to January 31, 2023 are \$6,519.00.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$719.00 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.
13. Interest on the rent deposit, in the amount of \$19.22 is owing to the Tenant for the period from July 1, 2021 to January 31, 2023.
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 March 15, 2023 pursuant to subsection 83(1)(b) of the Act.
15. The Tenant AT testified that he is on ODSP and receives only \$1,200.00 per month which is not enough to pay for food and rent so he has prioritized food. AM testified that she does not live at the rental unit and was included in the lease because the Landlord would not let her stay at the rental unit otherwise. She is a U.S. citizen and comes back and forth to visit

AT. She did testify that they were looking to move out as soon as possible and that they were looking for another place. The Tenants also testified that they were looking at other places and have found another person to share the rent with them.

16. The Landlord's agent objected to the Tenant being given extra time because he did not believe the Tenants will vacate the rental unit on termination date and it would add to the rent arrears and be prejudicial to the Landlord.
17. Based on the evidence before me, I am willing to grant the Tenants until March 15, 2023 to either make payments or to move out.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants 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:**
 - \$7,432.00 if the payment is made on or before February 28, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$8,159.00 if the payment is made on or before March 15, 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 Tenant has paid the full amount owing as ordered plus any additional rent that became due after March 15, 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 Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before March 15, 2023**
 5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$5,966.78. 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 Tenants shall also pay the Landlord compensation of \$23.90 per day for the use of the unit starting February 1, 2023 until the date the Tenant moves out of the unit.
 7. If the Tenants do not pay the Landlord the full amount owing on or before March 15, 2023, the Tenants will start to owe interest. This will be simple interest calculated from March 16, 2023 at 2.00% annually on the balance outstanding.

8. If the unit is not vacated on or before March 15, 2023, then starting March 16, 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 March 16, 2023.

March 1, 2023

Date Issued

Sheena Brar
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 16, 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 February 28, 2023

Rent Owing To February 28, 2023	\$7,246.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$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 the Tenant must pay to continue the tenancy	\$7,432.00

B. Amount the Tenants 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	\$7,973.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$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 the Tenant must pay to continue the tenancy	\$8,159.00

C. Amount the Tenants must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$6,519.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	- \$719.00
Less the amount of the interest on the last month's rent deposit	- \$19.22

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	\$5,966.78
Plus daily compensation owing for each day of occupation starting February 1, 2023	\$23.90 (per day)