



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

**Citation:** Kendale (11) Div. v Kerr, 2023 ONLTB 19213

**Date:** 2023-02-13

**File Number:** LTB-L-031932-22

**In the matter of:** 610, 11 KENDALE CRT  
HAMILTON ON L9C2T7

**Between:** Kendale (11) Div. Landlord

**And**

George Kerr Tenant

Kendale (11) Div. (the 'Landlord') applied for an order to terminate the tenancy and evict George Kerr (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also claimed charges related to NSF cheques.

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

The Landlord's Representative Nidhi Sharma 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 parties disagree about the lawful rent. The dispute arises based on order SOT-8666217 issued on February 7, 2018. In that order the Landlord is prohibited from raising the rent until the listed maintenance work is completed.
4. Order SOT-99563-18 issued on February 20, 2019 explicitly addressed that previous order and says "The Tenant concedes that the Landlord has completed all repairs from the

original order". The Tenant states that they never received the second order, and the maintenance work was not completed and therefore the Landlord did not have the authority to raise the rent.

5. The Tenant has been paying what he believes to be the lawful rent. The only outstanding arrears are the unpaid rent increases between the issuance of the SOT-99563-18 and the hearing date of this application.

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6. I find SOT-99563-18 to be determinative on the issue. While the Tenant states that they did not receive the order, the Tenant was present at the hearing of SOT-99563-18 and the order states that Tenant conceded the required maintenance work was completed. As such, the Tenant was required to pay the lawful rent increases since that order.
7. The lawful rent is \$1,027.92. It is due on the 1st day of each month.
8. The Tenant has paid \$7,958.72 to the Landlord since the application was filed.
9. The rent arrears owing to January 31, 2023 are \$799.58.
10. The Landlord is entitled to \$20.00 to reimburse the Landlord for administration charges and \$5.00 for bank fees the Landlord incurred as a result of 1 cheque given by or on behalf of the Tenant which was returned NSF.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. 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 grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act. Both of the parties were agreeable to a payment plan if I found that the Tenant was responsible for paying the lawful rent increases. As the rent arrears are low and the outstanding amount resulted from a genuine disagreement between the parties about the Tenant's obligation to pay the rent increases, I find that a payment plan is appropriate in the circumstances.

**It is ordered that:**

1. The Tenant shall pay to the Landlord \$1010.58 for arrears of rent up to January 31, 2023 and costs.
2. The Tenant shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:
  1. On or before March 15, 2023 a payment of \$112.28

2. On or before April 15, 2023 a payment of \$112.28
  3. On or before May 15, 2023 a payment of \$112.28
  4. On or before June 15, 2023 a payment of \$112.28
  5. On or before July 15, 2023 a payment of \$112.28
  6. On or before August 15, 2023 a payment of \$112.28
  7. On or before September 15, 2023 a payment of \$112.28
  8. On or before October 15, 2023 a payment of \$112.28
  9. On or before November 15, 2023 a payment of \$112.28
3. The Tenant shall pay the full monthly rent of \$1,027.92 for February 2023 on or before February 28, 2023.

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4. The Tenant shall also pay to the Landlord new rent on time and in full as it comes due and owing for the period March 2023 to November 2023, or until the arrears are paid in full, whichever date is earliest.
5. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after January 31, 2023.

**February 13, 2023**  
**Date Issued**

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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.