



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

Citation: KPM Simcoe Inc. v McCabe, 2022 ONLTB 14245

Date: 2022-12-09

File Number: LTB-L-021130-22

In the matter of: Th-39, 1011 Simcoe Street North
Oshawa ON L1G4W3

Between: KPM SIMCOE INC. Landlord

And

Donna McCabe and Robert McCabe Tenants

KPM Simcoe Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Donna McCabe and Robert McCabe (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on October 27, 2022. Only the Landlord's agents C. Destito and A. Kannan attended the hearing. As of 11:07 am, the Tenants were 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. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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 Tenants were still in possession of the rental unit.
3. The lawful rent is \$1,183.79. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$38.92. This amount is calculated as follows: \$1,183.79 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to October 31, 2022 are \$15,343.15.
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 \$1,050.00 from the Tenants 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 \$137.20 is owing to the Tenants for the period from January 7, 2014 to October 27, 2022.
10. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenants have been in arrears since October 2021 and no payments have been made since the application was filed. The Landlord has made multiple attempts to resolve the issue with the Tenants to no avail. As noted, the Tenants did not attend the hearing of this matter and thus I did not have the opportunity to hear their evidence regarding their circumstances or any dispute of the Landlord's application for an eviction order. Therefore, I find that a standard order as requested by the Landlord is appropriate in the circumstance.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$17,896.73 if the payment is made on or before December 20, 2022. 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 Tenants have paid the full amount owing as ordered plus any additional rent that became due after December 20, 2022 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants 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 December 20, 2022**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$14,209.00. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$38.92 per day for the use of the unit starting October 28, 2022 until the date the Tenants moves out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before December 20, 2022, the Tenants will start to owe interest. This will be simple interest calculated from December 21, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 20, 2022, then starting December 21, 2022, 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 December 21, 2022.

December 9, 2022
Date Issued

Donna Adams
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 June 21, 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 December 20, 2022

Rent Owing To December 31, 2022	\$17,710.73
Application Filing Fee	\$186.00
Total the Tenants must pay to continue the tenancy	\$17,896.73

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

Rent Owing To Hearing Date	\$15,210.20
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$1,050.00
Less the amount of the interest on the last month's rent deposit	- \$137.20
Total amount owing to the Landlord	\$14,209.00
Plus daily compensation owing for each day of occupation starting October 28, 2022	\$38.92 (per day)