



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

**File Number: LTB-L-044101-24**

**In the matter of:** 37 GARSON CONISTON RD  
GARSON ON P3L1G1

**Between:** Joshua McCully  
Morgan Smith

**And**

Craig Dewar  
Lauren Dewar

I hereby certify this is a  
true copy of an Order dated  
**Feb. 18, 2025**  
  
Landlord and Tenant Board

Landlords

Tenants

Joshua McCully and Morgan Smith (the 'Landlords') applied for an order to terminate the tenancy and evict Craig Dewar and Lauren Dewar (the 'Tenants') because the Tenants did not pay the rent that they owe.

This application was heard by videoconference on February 12, 2025. The Landlord, Joshua McCully, the Landlords' Legal Representative, A. Forgeron, and the Tenants attended the hearing.

**Preliminary Issue:**

Following an adjournment on September 23, 2024 because the Tenants raised disrepair issues pursuant to section 82 of the *Residential Tenancies Act, 2006* ('the Act'), interim order LTB-L-044101-24-IN issued on October 1, 2024, directed the Tenants to pay the monthly rent starting October 1, 2024.

At the hearing, the Tenants stated that they did not make the payments because of the disrepair issues they intend to raise. Due to their failure to comply with the order, I did not permit the Tenants to speak on the issues except for an alleged mold issue. The Tenants claimed the presence of black mold in the unit was a serious breach of the Landlords' responsibility.

**Determinations:**

1. The Landlords 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. The Tenants are in possession of the rental unit.
3. The lawful rent is \$1,978.25. It is due on the first day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$65.04. This amount is calculated as follows: \$1,978.25 x 12, divided by 365 days.

5. The Tenants claimed that they paid the rent for January and February 2024 by cash to the Landlords but had no prove of the payment. The Tenants dropped the claim when the Landlords stated that the rent was paid by e-transfer in January 2024, and no other payments have been received.
6. The Tenants have not made any payments since the application was filed.

#### Mold Allegations

7. The Tenants stated that the Landlords were notified about mold in the unit on February 22, 2024, and reminded on May 13, 2024, but took no steps to remediate it. The Landlords instead stated that the problem was condensation and directed them to clean the area.
8. The Tenants provided pictures taken on April 21, 2024 and April 25, 2024 showing dark spots in multiple areas of the unit. These pictures were not sent to the Landlords, who only became aware of them when they were disclosed as evidence for the adjourned hearing on September 23, 2024.
9. The Landlords testified that during their visit to the unit on February 26, 2024, they observed condensation on the windows. Although the Tenants admitted that they sometimes left the windows open, the Landlords did not observe mold in the unit. On February 29, 2024, the Landlords returned to install a refrigerator and still did not observe mold in the unit.
10. The Landlords presented a picture of the window showing condensation on it, and stated that since February 2024, he has not been permitted entry into the unit and was shocked to see the photographs of mold uploaded to the LTB's online portal by the Tenants. The Landlords' email to the Tenants on June 3, 2024, a response to the Tenants' correspondence from May 13, 2024, expressing concern about the cleanliness of the unit was ignored.
11. Following the adjournment and revelations about mold in September 2024, the Landlord sent emails to the Tenants seeking to inspect the unit on October 6, 2024, October 8, 2024, October 10, 2024, November 21, 2024, December 3, 2024, January 4, 2025, January 7, 2025, January 8, 2025, January 21, 2025, and January 22, 2025. The Tenants ignored the Landlords in large part and only responded on January 7, 2025 and January 22, 2025 stating that they were not home and could not put their dogs away. The Tenants described their dogs as aggressive at the hearing.

#### Analysis

12. Section 20 (1) of the Act provides that a Landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.
13. Based on all the evidence, the Tenants have failed to demonstrate that the Landlords breached their obligations under the Act. The Tenants alleged there was mold in the unit in February 2024, but this was not verified by the Landlords who attended the unit twice, a few days later.

14. The Tenants took pictures of the alleged mold in April 2024 and sat on the pictures until September 2024. In May 2024, they asked the Landlord for an update on the alleged mold and failed to provide the pictures to disprove the Landlords' belief that there was none. After the pictures were revealed to the Landlords, the Landlords sought to inspect the unit and were ignored at least eight times and on the two occasions the Tenants responded, they claimed that they were away and could not contain their aggressive dogs. The Tenants utterly frustrated any efforts by the Landlords to inspect the unit and commence remediation, if necessary.
15. The Tenants took advantage of the Landlords and weaponized the law against them. They withheld the pictures until September 2025 to derail the Landlords' claim about their failure to pay the rent. The Tenants due to the claims about disrepair, obtained an adjournment and argued against paying ongoing rent and subsequently defied the order to pay. The Tenants have lived in the unit rent free for over a year.
16. The rent arrears owing to February 28, 2025 are \$25,717.25.
17. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
18. The Landlords collected a rent deposit of \$1,900.00 from the Tenants and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
19. Interest on the rent deposit, in the amount of \$177.17 is owing to the Tenants for the period from October 1, 2019 to February 12, 2025.

#### Relief from Eviction

20. The Tenants, who have resided in the unit since 2018 and have two children, maintain that they did not pay the rent due to issues of disrepair.
21. The Tenants are both employed and earn approximately \$3,400.00 biweekly. They claim that they can pay the outstanding arrears because they saved it all.
22. 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 Landlords attempted to negotiate a repayment agreement with the Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The amount outstanding is substantial and the Tenants have not paid any rent since the application was filed despite the order to do so.


#### It is ordered that:

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**
  - \$25,903.25 if the payment is made on or before February 28, 2025. See Schedule 1 for the calculation of the amount owing.

**OR**

- \$27,881.50 if the payment is made on or before March 1, 2025. 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 March 1, 2025 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 March 1, 2025.**
  5. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$22,628.31. 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 Landlords owe 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 Landlords compensation of \$65.04 per day for the use of the unit starting February 13, 2025 until the date the Tenants moveout of the unit.
  7. If the Tenants do not pay the Landlords the full amount owing on or before March 1, 2025, the Tenants will start to owe interest. This will be simple interest calculated from March 2, 2025 at 7.00% annually on the balance outstanding.
  8. If the unit is not vacated on or before March 1, 2025, then starting March 2, 2025, the Landlords 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 Landlords on or after March 2, 2025.

**February 18, 2025**  
**Date Issued**

  
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Jitewa Edu  
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 2, 2025 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, 2025**

Rent Owing To February 28, 2025	\$25,717.25
Application Filing Fee	\$186.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$25,903.25</b>

**B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before March 1, 2025**

Rent Owing To March 31, 2025	\$27,695.50
Application Filing Fee	\$186.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$27,881.50</b>

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

Rent Owing To Hearing Date	\$24,519.48
Application Filing Fee	\$186.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,900.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$177.17
<b>Total amount owing to the Landlords</b>	<b>\$22,628.31</b>
Plus daily compensation owing for each day of occupation starting February 13, 2025	\$65.04 (per day)