



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

File Number: LTB-L-049986-25

In the matter of: 109, 111 NOTCH HILL RD
KINGSTON ON K7M2X3

Between: METCAP LIVING MANAGEMENT INC. Landlord

And

Heaven Smith Tenant

METCAP LIVING MANAGEMENT INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Heaven Smith (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 26, 2026.

The Landlord's Legal Representative, Phylcia Thomas, the Tenant and the Tenant's Legal Representative, John Done, attended the hearing.

Determinations:

Preliminary Issue: The N4 notice and Application seek less rent than what is owing

1. The Tenant's Legal Representative stated at the outset of the hearing that the matter should be dismissed as the amount of arrears alleged in the N4 notice of termination and the application were incorrect—they sought for a lower amount of arrears than what the Tenant owes on the rent ledger.
2. The Landlord stated that the amount on the N4 notice is the only amount that the Landlord is seeking as arrears, and that while the rent ledger shows arrears owing that were not identified in the N4 notice, they are not seeking to have an order for those arrears. The Landlord stated that they have the right to seek a lesser amount of arrears and that their N4 notice is not defective as a result.
3. Section 59(2) of the *Residential Tenancies Act, 2006* (the 'Act') sets out that the notice shall set out the amount of rent due and shall specify that the tenant may avoid termination of the tenancy by paying that amount on or before the date of termination in the notice as well as any new rent that comes due. Section 212 of the Act states that substantial compliance with this Act respecting the contents of forms, notices or documents is sufficient. I find the error is substantially compliant and the error would not cause

significant prejudice to the Tenant. The Tenant had the benefit of voiding the N4 notice by paying a lower amount, and I am not satisfied that the N4 notice is defective.

4. Therefore, the matter proceeded based on the amount the Landlord identified as arrears in the N4 notice and the application.

Preliminary Issue: The Landlord is properly identified

5. The Tenant's Representative then raised that the Landlord identified is not the owner of the property, and therefore is not a Landlord, and as a result the file should be dismissed. The Tenant's original Lease was with Brock King properties, and the Tenant submitted a land parcel registry to show that Metcap Living Management is not listed as the owner.
6. When asked who the Tenant has been paying her rent to, the Tenant's Legal Representative stated that she receives Ontario Disability Support Program (ODSP), and that they pay Metcap Living Management, not the Tenant directly. I noted that while this was the fourth hearing, this was the first time the Tenant suggested the proper landlord was not named.
7. The Landlord's Legal Representative stated that "Starlink" purchased the building from Brock King Properties, and that Metcap Living Management is the property management company.
8. I note that the definition of "landlord" in section 2(1) of the *Residential Tenancies Act, 2006* (the Act) includes the owner of a rental unit "or any other person who permits occupancy of a rental unit." The Act specifically contemplates that someone other than an owner of the rental unit can be a landlord.
9. Whether a property manager falls within the definition of "landlord" depends on the facts of the given case. Given that the Tenant did not dispute that ODSP pays her rent to Metcap Living Management on her behalf, and there was evidence provided by the Tenant about payments she made to the Metcap portal, I find that Metcap Living Management is a Landlord as they permit occupancy of the rental unit.

L1 Application:

10. 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.
11. As of the hearing date, the Tenant was still in possession of the rental unit.
12. The lawful rent is \$1,135.68. It is due on the 1st day of each month.
13. Based on the Monthly rent, the daily rent/compensation is \$37.34. This amount is calculated as follows: $\$1,135.68 \times 12$, divided by 365 days.
14. The Tenant has paid \$5,900.78 to the Landlord since the application was filed.

15. The rent arrears owing to January 31, 2026 are \$3,597.99. The Tenant did not dispute the amount of the arrears.
16. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
17. The Landlord collected a rent deposit of \$1,049.52 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.
18. Interest on the rent deposit, in the amount of \$54.05 is owing to the Tenant for the period from January 1, 2024 to January 26, 2026.

Section 83 Considerations:

19. The Tenant's Legal Representative testified that the Tenant uses a wheelchair, utilizes a guide dog, and is not able to work. The Tenant receives \$1,408.00 per month from ODSP and the Canadian Housing Benefit provides \$608.00 per month. The Tenant has not been able to receive an affordable housing amount from the Ontario Government due to the Landlord's refusal to sign a form.
20. The Tenant proposed a payment plan of \$100.00 per month until the arrears are paid. The Tenant can receive assistance from the City of Kingston to pay the arrears, conditional on the monthly payment being no more than \$100.00 per month.
21. The Tenant's Legal Representative stated that the Board must accept the Tenant's proposed payment plan under Ontario's *Human Rights Code*, as he claimed the duty to accommodate requires the Board to consider the client's disability and reliance on social assistance in determining a fair payment plan. However, the Tenant did not provide any evidence to establish how her disability is connected to her failure to pay rent that she owes.
22. The Landlord is seeking a standard 11-day eviction order. The Landlord stated that there are other funds that Tenant could apply for to cover the balance of the arrears instead of the lengthy payment plan proposed.
23. 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.
24. I accept the Tenant's evidence that she will have assistance in paying the arrears, though it is conditional on the monthly payment being no more than \$100.00 per month. The Landlord did not provide any evidence as to how the payment plan would prejudice the Landlord, and I find absent that evidence, that the payment plan is reasonable. As a result, it would not be unfair to deny eviction subject to a payment plan. If the Tenant does not pay the arrears back according to the plan, the Landlord can bring an application to evict him under section 78.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. The Tenant shall pay to the Landlord \$3,783.99 for arrears of rent up to January 31, 2026, inclusive of the filing fee.
3. The Tenant shall pay to the Landlord the amount in paragraph 2 of this order in accordance with the following schedule:
 - a. Starting March 2026 and ending March 2029, the Tenant shall pay to the Landlord \$100.00 per month on or before the last day of the month;
 - b. On or before the last day of April 2029, the Tenant shall pay to the Landlord the remaining balance of \$83.99.
2. Commencing March 1, 2026 and continuing until April 1, 2029, or until the arrears are paid in full, whichever date is earliest, the Tenant shall pay to the Landlord the lawful monthly rent on or before the first day of the month.
3. If the Tenant fails to comply with any of the conditions set out in paragraphs 3 and 4 of this order, the Landlord may apply under section 78 of the Residential Tenancies Act, 2006 (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, 2026. The Landlord must make the application within 30 days of the breach of a condition. This application is made to the LTB without notice to the Tenant.

February 18, 2026
Date Issued

Allana McComb
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.