



Order under Section 69 Residential Tenancies Act, 2006

Citation: Swar v Chernega, 2023 ONLTB 59190

Date: 2023-08-31

File Number: LTB-L-078617-22

In the matter of: 1ST FLOOR, 70 PRINGDALE GARDENS CIR
SCARBOROUGH ON M1J0B1

Between: Rajesh Swar
Awarty Khadka

And

Natalia Chernega

I hereby certify this is a
true copy of an Order dated

Aug. 31, 2023

Landlord and Tenant Board

Landlords

Tenant

Rajesh Swar and Awarty Khadka (the 'Landlord') applied for an order to terminate the tenancy and evict Natalia Chernega (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on August 17, 2023. The Landlords, the Landlords' Legal Representative, T. Sivapatham, 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 lawful rent is \$1,300.00.
4. Based on the Monthly rent, the daily rent/compensation is \$42.74. This amount is calculated as follows: \$1,300.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to August 31, 2023 are \$23,400.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Issues Under Section 82 of the Act

Leaking Faucet

8. The Tenant testified that in the summer of 2021, there was a problem with the kitchen faucet which the Landlords were informed about verbally at various times, including September 2021. The Tenant provided text messages showing the Landlord was informed on November

7 and 22, 2021, with pictures attached. The Landlord, who at a point tried to bring in parts to fix it, did not resolve the issue and it was still ongoing as of May 18, 2023.

9. The Landlord, Awarty Khadka, testified that she was informed about the problem in November 2021 and was denied entry into the unit for an inspection. The Tenant removed a part of the faucet and instructed the Landlord to purchase it. The part did not fit when the Tenant tried to install it so she returned it to the Landlord who bought the whole piece and contacted the Tenant again. The Tenant promised to let her know the right time to enter the unit in December 2021. There was no further correspondence on this issue in December 2021.

Bad Internet Connection

10. Starting March 2022, the internet connection was bad and according to the Tenant, affected her online job. The Tenant incurred additional charges on her phone bill because she had to obtain more gigabytes of data for her phone.
11. The Landlord testified that the internet was sometimes unstable but it was never a significant issue and the Tenant has asked her to refresh the internet on occasion and she always did.

Noisy Chairs

12. The Tenant stated that the Landlord's kitchen in the upper unit is directly above her bedroom and from 6:00 a.m. to about 1:00 a.m., they move the kitchen chairs around and keep her awake. In October 2021, she suggested that the Landlords place soft material under the chair to cushion the effect when the chairs are moved but the issue is yet to be resolved. The Tenant provided a copy of the text message she sent to the Landlords on that date.
13. The Landlord stated that they are barely home except for the period of the pandemic and could not have caused noise disturbances during the period claimed by the Tenant. They placed covers under the chairs and the Tenant made no further complaints.

Analysis

14. Section 20 (1) of the Residential Tenancies Act, 2006 ("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.
15. Section 22 of the *Residential Tenancies Act, 2006* (*'the Act'*) provides that a landlord shall not at any time during a tenant's occupancy of a rental unit and before the day on which an order evicting the tenant is executed substantially interfere with the reasonable enjoyment of the rental unit or the residential complex in which it is located for all usual purposes by a tenant or members of his or her household.
16. Based on all the evidence, the Tenant has failed to show that the Landlord breached the provisions of the Act. The Landlord did try to enter the unit to inspect the leaky faucet but was not allowed by the Tenant, who instead sent pictures and directed the Landlord to buy parts so she could install them. The Tenant promised to contact the Landlord about the repair in December 2021 but there is no evidence to show that she did. The pictures provided

by the Tenant of the leaking faucet are from November 2021 and I am not satisfied that the issue persisted.

17. The bad internet connection was not within the control of the Landlords who judging from the Tenants complaints in text messages from March 2022 and May 2023, responded saying that they will refresh the router. Not only was the problem sporadic, but the Tenant has also failed to prove that she incurred any expense as a result.
18. On the issue of the noisy chairs, the Tenant has simply failed to prove on a balance of probabilities, that the chairs in the Landlords' kitchen caused that much noise on a daily basis. The only complaint by text message is from October 2021 and the Landlords claimed they placed covers under the chairs.
19. The Tenant is not entitled to an abatement of rent for the issues raised under section 82 of the Act.
20. There is no last month's rent deposit.

Relief from Eviction

21. The Tenant has lived in the unit for over four years, is self- employed and fell into arrears after she was infected with the Covid – 19 virus. She currently receives approximately \$1,000.00 a month from online tutoring and is actively job-seeking.
22. The Tenant did not follow an interim order from the Board issued June 1, 2023, to pay the monthly rent from June 1, 2023, because she had no money to do so. The amount outstanding is large, the Tenant has not paid any rent since the application was filed and has no clear means of so doing.
23. I have considered all 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 September 17, 2023 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$23,586.00 if the payment is made on or before August 31, 2023. See Schedule 1 for the calculation of the amount owing.


OR

 - \$24,886.00 if the payment is made on or before September 17, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenant 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 September 17, 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 Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before September 17, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$23,012.58. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$42.74 per day for the use of the unit starting August 18, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before September 11, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 12, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before September 17, 2023, then starting September 18, 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 September 18, 2023.

August 31, 2023
Date Issued



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 March 18, 2024 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before August 31, 2023

Rent Owing To August 31, 2023	\$23,400.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$23,586.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before September 17, 2023

Rent Owing To September 30, 2023	\$24,700.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$24,886.00

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

Rent Owing To Hearing Date	\$22,826.58
Application Filing Fee	\$186.00
Total amount owing to the Landlord	\$23,012.58
Plus daily compensation owing for each day of occupation starting August 18, 2023	\$42.74 (per day)