



Order under Section 69 Residential Tenancies Act, 2006

Citation: Rahat v Sharif, 2024 ONLTB 26339

Date: 2024-04-19

File Number: LTB-L-066319-23

In the matter of: 148 Ontario St N
Milton ON L9T2T4

Between: Uzma Rahat Landlord

and

Muzzamil Sharif Tenants Zohaib Sharif

Uzma Rahat (the 'Landlord') applied for an order to terminate the tenancy and evict Muzzamil Sharif and Zohaib Sharif (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on March 6, 2024.

The Landlord, the Landlord's Legal Representative, Hasnain Hasni (student-at-law), the Tenant, Zohaib Sharif, on his own and on behalf of the other tenant, and Taimoor Ali, a friend of the Tenant who acted as a translator for the Tenant attended the hearing. The other tenant was present for at least one point during the hearing but did not testify. The Tenant spoke with Duty Counsel prior to the start of this proceeding.

Determinations:

Preliminary Issue: The Tenants cannot raise issues under Section 82 of the Act and did not provide timely disclosure

1. At the hearing the Tenants wished to raise issues pursuant to section 82 of the *Residential Tenancies Act, 2006* (the 'Act'). To this end, the Tenant provided materials to the LTB on February 29, 2024 - which were subsequently posted to the Tribunals Ontario Portal ('TOP') on March 1, 2024 – 5 days in advance of the hearing.

2. Uploading materials to TOP does not mean documents have been provided to another party unless there is an agreement in place and, here, there was no such agreement.
3. The Landlord's Representative objected to the Tenants being permitted to raise any issues under s. 82. The Landlord's Representative advised he did get any materials from the Tenant and submitted it was only on the morning of the hearing that he had seen materials posted on TOP by the Tenants and he was unable to open these.

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4. Although the Tenant testified he mailed materials to the Landlord he admitted this was not done until 6 days before the hearing – again less than 7 days in advance of the hearing date.
5. Section 82 provides tenants may raise issues which may result in set-off against a Landlord's claims for arrears at an L1 hearing so long as they provide written notice of these issues to the Landlord in advance of the hearing in accordance with the Board's rules or provide a satisfactory explanation why they could not do so.
6. Rule 19.4 of the LTB's Rules provides a tenant's written notice of their section 82 issues must be provided 7 days in advance of the hearing. Where this is not done, the LTB's Rule 19.5 provides a tenant shall not be permitted to raise their issues unless the LTB is satisfied the tenant could not comply with the requirements.
7. Similarly, Rule 19.1 of the LTB's Rules provides that all materials on which a party intends to rely at a hearing must be provided to the other party and the LTB 7 days in advance of the hearing. Rule 19.7 provides, in part, that a party who fails to comply with Rule 19 may not rely on evidence that was not properly disclosed unless ordered otherwise.
8. To comply with the section 82 and disclosure requirements the Tenants had to provide their list of section 82 issues and all materials on which they intended to rely to the Landlord on or before February 28, 2024. This was not done.
9. Absent a satisfactory explanation as to why the Tenants could not have done so, the Tenants are not able to raise their issues under s. 82. Additionally, unless ordered otherwise, the Tenants may not rely on their materials.
10. The Board's records show the Notice of Hearing – which advises parties of their disclosure obligations - and a copy of a s. 82 form was mailed to the Tenants on October 16, 2023. The Tenant testified he had difficulty completing the form because he was not good with English. The Tenant also testified he was stressed because his parents were in ill-health. However, the Tenant testified he took his parents to the hospital on November 16, 2023 –

approximately one month after the s. 82 form and Notice of Hearing were mailed to the Tenants.

11. The Tenant further testified he could not afford a legal representative; however, the Tenant consulted Legal Aid in the summer before the L1 application was filed. While he submitted they did not fill in the forms for him, the Tenant testified he eventually completed the s. 82 form with the assistance of a family friend. As set out above, the Tenant then provided this form and accompanying materials to the LTB on February 29, 2024.
12. In the above circumstances we are not satisfied the Tenants could not have complied with the Rules. The Tenant had a period of at least 4 months to complete the s. 82 form and provide his materials to the Landlord and LTB. The s. 82 form was ultimately completed with the assistance of a friend immediately before the hearing and there was no evidence getting a friend to assist the Tenant earlier was not possible.
13. As a result, the Tenants were not permitted to raise any issues under s. 82 of the Act and may not rely on materials they provided to the LTB on February 29, 2024. The Tenants remain free to seek legal advice and/or pursue any timely issues that may form the subject of a tenants' application under the Act.

L1 Determinations

14. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment 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.
15. As of the hearing date, the Tenants were still in possession of the rental unit.
16. The lawful rent is \$2,100.00. It is due on the 1st day of each month.
17. Based on the Monthly rent, the daily rent/compensation is \$69.04. This amount is calculated as follows: \$2,100.00 x 12, divided by 365 days.
18. The Tenants have not made any payments since the application was filed.
19. The Landlord's Representative testified after the application was filed the Landlord spoke with the Tenant and advised they would be waiving rent for the month of July 2023 to satisfy the compensation requirement with respect to a N12 Notice of Termination for Landlord's own use. As a result, the Landlord confirmed they were not seeking rent for July 2023.
20. While the Tenant denied ever discussing compensation with the Landlord, the Landlord's Application for eviction and termination based on the N12 Notice was heard the week before this hearing.

21. Given there is an outstanding application before the Board, we find it is not appropriate to make a determination regarding whether the Landlord's waiver of rent complied with the requirements for payment of one month's compensation under the Act. However, we accept that before us the Landlord confirmed they were waiving one month's rent of arrears.
22. Therefore, we find the rent arrears owing to March 31, 2024, are \$16,800.00.
23. As this is solely an L1 Application for non-payment of rent and collection of rent owed, the Landlord is not entitled to seek compensation for any alleged damages or unpaid utilities.
24. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
25. There is no last month's rent deposit.

Mandatory Denial of Eviction and Relief from Eviction

26. The Tenants submit the Landlord was in serious breach of her obligations such that eviction must be denied under s. 83(3)(a) of the Act. The Tenants raised a number of issues as follows:
 1. The laundry/dryer is not working;
 2. Plumbing related issues in the bathroom;
 3. Broken air conditioner;
 4. That the Landlord has harassed the Tenants' parents;
 5. Blocked side entrance of the residential unit; and
 6. A bow/hump in the front wooden deck.
27. Subsection 83(3)(a) of the Act provides the Board shall refuse to grant the application where satisfied that the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement.
28. What is required is a serious breach of a landlord's responsibilities. With respect to maintenance and/or repair issues this is not established simply by a rental unit being in poor condition and/or in need of extensive repairs – a contextual approach must be applied. In addition, given the use of the present tense in s. 83(3)(a), the Landlord's breach must also be ongoing at the time of the hearing. [see *Puterbough v. Canada Public Works and Government Services*, [2007] O.J. No. 748 at paras. 21-22, 27-28]
29. Regarding the Tenants' first two maintenance concerns, the Tenant testified he gathers clothes and takes them to a local coin laundry, that the toilet leaks at the base when flushed, and that he puts water in a tub to bathe as the handle on the bath/shower faucet is broken.

30. In response to the Tenants' allegations regarding the laundry facilities and bathroom, the Landlord testified her husband fixed the toilet, that they first learned about the dryer ten days before this hearing at the N12 hearing, and that this was the first time she heard any issues with respect to the bath/shower faucet and/or bidet/commode.
31. The Tenant testified the Landlord was told about all issues in August 2023. He admitted the toilet had once been fixed but testified this was only a temporary fix and that when the toilet was fixed the Landlord was told a new toilet was required. He testified no new toilet was installed and the toilet still leaks.
32. There was no supporting evidence as to when the Tenant advised the Landlord of any issues with the bathroom or laundry facilities. Given there was a history with the toilet being repaired - which may have given rise to multiple points in time when the Tenant could have raised issues - we were not satisfied the Landlord's evidence was not reliable or credible nor that there was any reason to prefer the Tenant's evidence.
33. As a result, we do not find the Tenant has demonstrated the Landlord was told about any further laundry or bathroom issues before these proceedings. Additionally, we note the Tenant testified he still uses the bathroom to bathe. We therefore find the impact of the above issues are more akin to inconveniences, with, we infer some potential out of pocket expenses for the laundry.
34. Therefore, even were we to accept that the laundry and issues in the bathroom are items which require repair and that the Landlord is in breach of their obligations – issues on which we make no determinations - we find the Tenants presented insufficient evidence to satisfy us that any failure to remedy these issues rises to the level of serious as contemplated under the Act.
35. With respect to the AC, the Tenant testified it stopped working on July 20, 2023, during a heat wave. He submitted this caused his father to develop elevated blood pressure and he had to go to the hospital. The Landlord testified the AC unit was repaired at a cost of \$600.00. The Tenant's evidence did not contradict this.
36. We therefore find the Tenants did not demonstrate it is more likely than not that the AC Unit was broken at the time of the hearing. In addition, we note at the time of the hearing there was no evidence concerns surrounding the lack of AC remained relevant. As a result, we do not find the Landlord is in serious and ongoing breach of her obligations with respect to the AC unit.
37. With respect to the allegations of harassment, we understand these pertained to direct oral communications between the Landlord and his parents. Under the Act, a landlord's duty not to harass is limited to a tenant and does not extend to occupants. Nonetheless, we have also considered this with respect to a landlord's obligations under s. 22 of the Act – no substantial interference with a household member's reasonable enjoyment of the rental unit.

38. The Landlord testified she has not been in the house for months. The Tenants' parents did not attend to testify and, aside from the Tenant stating the Landlord once told his parents to stay upstairs, no other particulars of the conduct or evidence regarding impact was provided. As a result, we do not find the Tenants have shown it is more likely than not that the Landlord is in serious and ongoing breach of her obligations with respect to any allegations of harassment at the time of the hearing – whether considered under s. 22 or 23 of the Act.
39. Next, the Tenant testified the Landlord blocked the side door to the residential complex when the Landlord's husband inserted nails to prevent use.
40. The Landlord testified the side entrance is for the basement tenants to use and it was only to help the Tenants' parents avoid snow one past winter that they were permitted to use this door. The Landlord testified the basement tenants subsequently expressed concern with the hours the Tenants and occupants kept and complained they were leaving the side door open. As a result, the Landlord admitted the side door was barred but testified the Tenant then broke it open. The Landlord denied the side door is currently barred and testified the Tenants are still using this entrance.
41. No supporting documentation was admitted into evidence showing whether the side door could or was currently being used by the Tenants. As the Landlord readily admitted she had at one point barred the side door, we are prepared to accept her evidence that the side door is no longer barred.
42. As a result, we find the Tenants have not demonstrated it is more likely than not that the side door is currently barred and find that the Landlord is not in serious and ongoing breach of her obligations with respect to the side door.
43. Finally, the Tenant testified there is a hump in the wooden deck outside the front door as a result of water drainage and that his mother tripped on this and was injured.
44. The Landlord testified there is no issue with the front deck and that it is the same as any other wooden deck. The Landlord questioned whether the Tenant's mother tripped on the deck as she suggested someone would not take pictures of their injured mother lying on the ground and send those rather than first assist their mother.
45. Even accepting that the Tenant's mother suffered an injury, no supporting documents were admitted into evidence to show the current state of the front deck, nor that support finding any alleged hump could or did cause the Tenant's mother to fall. Further, we note that there was no evidence the alleged hump posed an issue at any other time during the tenancy.
46. We were therefore not satisfied the Tenants proved on a balance of probabilities that there is a hump on the front deck nor that the failure to repair such, if it did exist, rises to the level of a serious and ongoing issue. We are therefore not satisfied on a balance of probabilities that the Landlord is in serious and ongoing breach of her obligations with respect to the front wooden deck.

47. Further, considering the Tenants' complaints overall, we find the evidence before us insufficient to find that the Landlord, even if in violation of the Act – an issue on which we make no determination in this application – is in serious breach of her obligations under the Act or of any material covenants of the tenancy agreement.
48. As a result, the Landlord's application is not refused under s. 83(3)(a).
49. The Tenant testified when he asked the Landlord to fix issues in the rental unit the Landlord told him to leave. Section 83(3)(c) of the Act provides for mandatory denial of eviction where the reason for the application being brought is that the Tenant has attempted to secure or enforce their legal rights.
50. The Tenant testified he told the Landlord about issues in the house in August 2023. The Landlord's evidence was that she began telling the Tenant that her daughter wished to move into the rental unit in June 2023. The Tenant also admitted they were in arrears of rent as of July 2023. In these circumstances, we do not find the Tenants have demonstrated it is more likely than not that the Landlord's application was commenced in retaliation to the Tenants trying to assert their rights.
51. As a result, the Landlord's application is not refused under s. 83(3)(c) of the Act.

Additional Considerations – Relief from Eviction

52. We have considered all the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
53. The Landlord sought an order for eviction. In addition to the issues surrounding the Landlord's N12 Notice of Termination, which was the subject of a separate contested hearing, the Landlord also alleged damage and substantial amounts owing for utilities. In response, the Tenant raised issues with the rental unit as set out above.
54. The Tenant requested a payment plan of an additional \$600.00 a month on top of rent so they could pay their arrears back over time, and, in the alternative, requested 6 months to find a new place to live.
55. The Landlord's Representative admitted the Landlord has not attempted to negotiate a payment plan with the Tenants; although, the Landlord testified she did send monthly email reminders to the Tenants regarding rental arrears and did not hear back.
56. The Tenant testified he did not pay rent, in part, because it was too much. The Tenant testified his monthly income is less than his monthly expenses by approximately \$1,400.00. Even including his brother's, the other tenant's, approximate monthly contribution of \$1,300.00 towards the rental unit expenses, the Tenant's monthly expenses exceed his income.

57. In addition, although the Tenant testified his brother's income is around \$2,000.00 he testified his brother has his own expenses and his parents have no income.
58. In the above circumstances, we do not find a payment plan reasonable nor that negotiations to agree on a payment plan would have been productive. As a result, we have declined to order a payment plan.
59. With respect to the Tenant's request for an extended eviction, we find the Tenants' inability to pay rent would result in further prejudice to the Landlord. As it stands the Landlord testified she is in arrears with her mortgagor and she provided correspondence dated December 21, 2023 from her mortgagor's counsel that indicated they will commence enforcement proceedings unless payment is received. Although the Landlord testified she has since paid one month towards the mortgage, she testified the current payment was again late and she remains significantly in arrears.
60. We also note the Landlord testified the Tenants have previously said they would move out but have not done so.
61. The Tenant's evidence was they require 6 months to find a new place because it is difficult to pay first and last month's rent and rent was too expensive when eviction was first raised. Even allowing for some past difficulties in getting paid about which the Tenant testified, we find providing an extension on eviction is not reasonable when the Tenants currently have income which affords a surplus of at least \$2,000.00 a month and they have not paid rent for approximately 9 months.
62. We also find that as the Tenants are two adults, the health of their parents who live with them and who are experiencing some mobility issues with his mother on crutches and his father experiencing foot issues, is not a significant enough factor to delay eviction.
63. Given the substantial amount of arrears and the evidence that supports finding enforcement proceedings may be begun against the Landlord, we do not find it appropriate to grant relief from eviction.
64. As a result, we have terminated the tenancy on the terms set out below.

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:**
 - \$19,086.00 if the payment is made on or before April 30, 2024. 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 April 30, 2024 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 April 30, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$15,300.24. 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 \$69.04 per day for the use of the unit starting March 7, 2024, 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 April 30, 2024, the Tenant will start to owe interest. This will be simple interest calculated from May 1, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before April 30, 2024, then starting May 1, 2024, 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 May 1, 2024.

April 19, 2024

Date Issued

Panagiotis Peter Roupas
Member, Landlord and Tenant Board

Rebecca Case
Vice-Chair, 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 November 1, 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before April 30, 2024

Rent Owing To April 30, 2024	\$21,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$2,100.00
Total the Tenants must pay to continue the tenancy	\$29,086.00

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

Rent Owing To Hearing Date	\$17,214.24
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$2,100.00
Total amount owing to the Landlord	\$15,300.24
Plus daily compensation owing for each day of occupation starting March 7, 2024	\$69.04 (per day)

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