



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

**Citation:** Ottawa Community Housing v Haider, 2024 ONLTB 9452

**Date:** 2024-02-02

**File Number:** LTB-L-073830-22

**In the matter of:** 1808, 251 DONALD ST  
OTTAWA ON K1K4B7

**Between:** Ottawa Community Housing Landlord

### **And**

Hamoud Haider Tenant

Ottawa Community Housing (the 'Landlord') applied for an order to terminate the tenancy and evict Hamoud Haider (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on December 5, 2023.

The Tenant attended the hearing. The Landlord was represented at the hearing by Beth Cummings.

### **Determinations:**

#### *L1 Application*

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 \$936.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$30.77. This amount is calculated as follows: \$936.00 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 December 31, 2023 are \$18,591.00.
7. The Landlord is entitled to \$20.00 to reimburse the Landlord for administration charges and \$0.00 for bank fees the Landlord incurred as a result of 1 cheque given by or on behalf of the Tenant which was returned NSF.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. There is no last month's rent deposit.

### *Rent Arrears*

10. The Tenant disputes the rent arrears. He believes his Rent Geared to Income (RGI) was calculated incorrectly. The Landlord's representative submits that the Tenant must pay market rent because he did provide sufficient documentation to support his RGI application.
11. Regardless, the Board no jurisdiction to determine that issue. Section 203 of the *Residential Tenancies Act, 2006* (the 'Act') states:

*The Board shall not make determinations or review decisions concerning,*

- (a) *eligibility for rent-geared-to-income assistance as defined in section 38 of the Housing Services Act, 2011 or the amount of geared-to-income rent payable under that Act; or*
- (b) *eligibility for, or the amount of, any prescribed form of housing assistance.*

12. Section 203 clearly provides that the Board has no jurisdiction to intervene with the decision of the designated service managers under the H.S.A respecting RGI eligibility. Accordingly, I find the rent arrears owing claimed by the Landlord to be correct.

### *Relief from Eviction*

13. According to s. 83 of the Act when the Board hears an application for an order evicting a tenant, the Board must consider whether there are any circumstances that support granting relief from eviction.
14. The Act is remedial legislation and the courts have determined that evicting a tenant is a remedy of last resort. In the cases of *Sutherland v. Lamontagne*, [2008] O.J. No. 5763 (Div. Ct.) and *Paderewski Society v. Ficyk*, [1998], the Divisional Court stated,  
  

*“To put somebody out of their home must, in my view, call for clear and compelling circumstances that it's no longer possible for the arrangement to continue.”*
15. In other words, eviction should only be ordered if it is not possible to bring a tenancy back into good standing. Where that is possible, it should be done rather than terminating the tenancy.

16. In this case the Tenant may be able to bring the tenancy into good standing by providing the proper documentation to get his RGI adjusted. The Tenant is aware of the documentation that needs to be provided. I have some doubts the Tenant will comply with what is required of him. However, the remedial nature Act suggests the Tenant should be given the benefit of the doubt.
17. The Tenant will be given until February 29, 2024, to pay the arrears outstanding. This will be plenty of time to pursue his application for RGI, and if approved, pay any difference owing.
18. 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 postpone the eviction until February 29, 2024 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:**
  - \$20,669.00 if the payment is made on or before February 29, 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 February 29, 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 February 29, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$18,014.85. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$30.77 per day for the use of the unit starting December 6, 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 February 13, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 14, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before February 29, 2024, then starting March 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 March 1, 2024.

**February 2, 2024**

**Date Issued**

\_\_\_\_\_  
Bryan Delorenzi

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 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 29, 2024**

Rent Owing To February 29, 2024	\$20,463.00
Application Filing Fee	\$186.00
NSF Charges	\$20.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$20,669.00</b>

**B. Amount the Tenant must pay if the tenancy is terminated**

Rent Owing To Hearing Date	\$17,808.85
Application Filing Fee	\$186.00
NSF Charges	\$20.00
<b>Total amount owing to the Landlord</b>	<b>\$18,014.85</b>
Plus daily compensation owing for each day of occupation starting December 6, 2023	\$30.77 (per day)

2024 ONL TB 9452 (CanLI)