



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Santos v Barbarian, 2024 ONLTB 3099

**Date:** 2024-01-15

**File Number:** LTB-L-048131-23

**In the matter of:** 72 NORTHVIEW HEIGHTS DR  
CAMBRIDGE ON N1R7A1

**Between:** John Santos Landlord

**And**

Sevag Barbarian Tenant

John Santos (the 'Landlord') applied for an order to terminate the tenancy and evict Sevag Barbarian (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 6, 2023.

The following people attended the hearing:

The Landlord, John Santos.

The Tenant, Sevag Barbarian.

### **Determinations:**

#### Preliminary Issue: Tenant Requested an Adjournment

1. Prior to the hearing the Tenant made a request to adjourn the hearing. The Tenant was participating in the hearing by phone.
2. The Tenant made the request on the basis he thought the hearing was an in person hearing and did not know the hearing would be held virtually.
3. The Tenant submitted that he had s. 82 issues to raise and only had the paper copies of the issues and evidence.

#### The Act and Analysis

4. Section 82 of the Act states:

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### Tenant issues

82 (1) At a hearing of an application by a landlord under section 69 for an order terminating a tenancy and evicting a tenant based on a notice of termination under section 59, the Board shall permit the tenant to raise any issue that could be the subject of an application made by the tenant under this Act if the tenant,

(a) complies with the requirements set out in subsection (2); or

(b) provides an explanation satisfactory to the Board explaining why the tenant could not comply with the requirements set out in subsection (2). 2020, c. 16, Sched. 4, s. 16.

### Requirements to be met by tenant

(2) The requirements referred to in subsection (1) are the following:

1. The tenant shall give advance notice to the landlord of the tenant's intent to raise the issue at the hearing.
  2. The notice shall be given within the time set out in the Rules.
  3. The notice shall be given in writing and shall comply with the Rules.
5. The Tenant testified that he had paper copies of his maintenance issues he wished to raise, however the Tenant did not give advance notice to the Landlord regarding the issues in accordance with the Board's Rules on disclosure.
  6. Further, the Tenant did not provide a copy to the Board in advance of the hearing.
  7. While the Tenant claims he thought the hearing was in person and that he had hard copies of his issues and evidence to provide, I am not satisfied the Tenant failed to file his issues with the Landlord or the Board due to him thinking the hearing was in person.
  8. Given the fact the notice of hearing clearly states the hearing is "virtual" and the fact the Tenant called in to participate by phone I am not persuaded by the Tenant's explanation and therefore I denied the Tenant's request for an adjournment.
  9. The Landlord and the Tenant were both present and I proceeded with the Landlord's application.

### Landlord's N4 Notice and 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 \$1,537.00. It is due on the 1st day of each month.
13. Based on the Monthly rent, the daily rent/compensation is \$50.53. This amount is calculated as follows:  $\$1,537.00 \times 12$ , divided by 365 days.
14. The Tenant has not made any payments since the application was filed.
15. The rent arrears owing to November 30, 2023 are \$13,009.00.
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 \$1,300.00 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. The position of the Landlord is that the Tenant has made no payments since the Landlord filed the application with the Board.
19. The Landlord is a small Landlord and given the arrears are at a substantial amount the Landlord is requesting a standard order for eviction.
20. The Tenant did not dispute the arrears, but restated he had maintenance issues with the rental unit.

#### Relief from Eviction: Section 83

21. Given that I told the Tenant his section 82 issues could not be raised, I allowed the Tenant to raise any maintenance issues that may fall under section 83 for relief of eviction.
22. The Tenant submitted that he had no heat in the rental unit since late October 2023 when the furnace stopped working. The Tenant testified that he sent the Landlord a text on October 29, 2023 informing the Landlord he had no heat.
23. The Tenant testified that he resided in the rental unit with his wife and two adult children ages 22 and 25.
24. The Tenant testified the Landlord responded and said he would attend to the rental unit and address the Tenant's complaint of no heat, but the Landlord did not show up.
25. The Tenant testified as of the day of the hearing, approximately one week after informing the Landlord of the lack of heat, the Tenant was using space heaters to heat his rental unit due to the fact the Landlord had not addressed the lack of heat.
26. The Landlord does not dispute the Tenant informed him there was no heat in the house, and testified he asked the Tenant for proof there was no heat. The Landlord testified Tenant sent a text with photos of the space heaters in the rental unit.

27. When I asked the Landlord why he did not address the Tenant's issue of no heat, the Landlord responded he was waiting for the day of the hearing to see what the hearing result would be.
28. The Landlord further submitted that he would address the matter the same day after the hearing.

### The Act and Analysis

29. Section 83 of the Act states:

#### Power of Board, eviction

(a) (1) Upon an application for an order evicting a tenant, the Board may, despite any other provision of this Act or the tenancy agreement,

(a) refuse to grant the application unless satisfied, having regard to all the circumstances, that it would be unfair to refuse; or

(b) order that the enforcement of the eviction order be postponed for a period of time.

#### Circumstances where refusal required

(3) Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that,

(a) **the landlord is in serious breach** of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement;

[emphasis added]

30. Although the Tenant had not submitted any evidence for the Board's consideration, which I addressed previously in this order, regarding the heat, I find the Tenant credible in his testimony regarding the details of the lack of heat and informing the Landlord. Given that the Landlord is not disputing the claim, I am satisfied the Landlord is in serious breach of his responsibilities under the Act.
31. For the reasons above in accordance with section 83(3)(a) of the Act, the Landlord's request for eviction is denied.

Amend L1 Application to L9 Application for Arrears Only

32. I informed the Landlord that there would be no order for eviction for the period on the N4 notice the Landlord based his L1 application on, however, I provided the Landlord with two options. The Landlord could withdraw the application and if he so chose to, refile another application with the Board on the period of arrears on this application, or proceed with amending the L1 application to an L9 application for arrears only.
33. The Landlord informed the Board he wished to proceed with amending the L1 application to an L9 application with no eviction and this order reflects the amount of arrears the Tenant owes to the Landlord up to November 30, 2023.
34. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
35. This order contains all reasons for the determinations and order made. No further reasons will be issued.

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**It is ordered that:**

1. The Tenant shall pay to the Landlord \$13,009.00 which represents the amount of rent owing and compensation up to November 30, 2023.
2. The Tenant shall pay to the Landlord the cost for filing the application with the Board in the amount of \$186.00.
3. If the Tenant does not pay the Landlord the full amount owing on or before January 26, 2024, the Tenant will start to owe interest. This will be simple interest calculated from January 27, 2024 at 7.00% annually on the balance outstanding.

**January 15, 2024**  
**Date Issued**

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Greg Brocanier  
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.

**Schedule 1**  
**SUMMARY OF CALCULATIONS**

**A. Amount the Tenant must pay to the Landlord on or before January 26, 2024**

Rent Owing To November 30, 2023	\$13,009.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$13,195.00</b>

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