



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

Citation: 159142 Canada Inc. v Rhyndress, 2024 ONLTB 26527

Date: 2024-04-16

File Number: LTB-L-087843-23

In the matter of: 2214 Route 500 W Embrun
ON K0A1W0

Between: 159142 Canada Inc. Landlord

And

James Rhyndress Tenants
Chantal Rhyndress

159142 Canada Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict James Rhyndress and Chantal Rhyndress (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

This application was heard by videoconference on March 28, 2024.

The Landlord's Director, Na Li, and the Landlord's Legal Representative, Carman Feng, and the Tenants attended the hearing. The Tenants declined to speak to Tenant Duty Counsel.

At the hearing the Tenants wished to raise issues pursuant to section 82 of the *Residential Tenancies Act, 2006* (the 'Act').

Determinations and Reasons:

Preliminary Issue: Can the Tenants raise their issues under Section 82 of the Act?

1. The Tenants have had an opportunity to properly advance their issues and have failed to do so. While the reasons for this are varied and discussed below, I held that the Tenants were not permitted to raise their issues under s. 82 of the Act at this hearing and that I would provide written reasons following the hearing. I have now had further time to consider the issues and my full reasons follow.

Section 82 Disclosure Obligations

2. Rules 19.4 of the Landlord and Tenant's Board's *Rules of Procedure* require a Tenant who wishes to raise section 82 issues to deliver the following to the Landlord at least 7 days before the hearing, unless the Board orders otherwise:
 1. a written description of each issue the tenant intends to raise; and
 2. a copy of all documents, pictures and other evidence that the tenant intends to rely upon at the hearing.
3. Rule 19.5 provides that a tenant who fails to comply with Rule 19.4 shall not be permitted to raise section 82 issues unless the LTB is satisfied that the tenant could not comply with the requirements.
4. In this case, the Tenants testified that they sent three copies of the same document as evidence to the Board, which was received by the Board on March 20, 2024, and uploaded, as one document to the Tribunals Ontario Portal ('Portal'), 7 days prior to this herein proceeding.
5. The Landlord's Legal Representative objected to the raising of the Tenants' section 82 issues, as he was not served with the evidence nor aware the same had been uploaded to the Portal prior to this hearing. Furthermore, the Tenants did not meet the requirements under the Board's Rules.
6. Providing the Board or uploading materials to the Portal does not mean the materials have been provided to the Landlord unless the Tenants had entered into a written consent agreement that specifically provides for this, which in this case was not ever done.
7. In other words, in the context of the Tenants wishing to raise issues under s.82 of the Act, in this case, the Tenants would have been required to provide all evidence they intended to rely on to the Landlord and the Board on or before March 21, 2024. This was not done.

Could the Tenants comply with the disclosure requirements?

8. There remains discretion under the Rules to permit a tenant to raise issues under s.82 of the Act where the Board is satisfied that the Tenant could not comply with the requirements.
9. The Tenants received the Notice of Hearing, which was mailed by the Board to the Tenants on November 27, 2023. Under s. 191(3) of the Act a notice or document is deemed to have been sufficiently given on the fifth day after mailing. The Notice of Hearing provided that each party must give the other party a complete copy of the evidence they want to use during the hearing in accordance with the Act and the Rules.
10. The Tenants testified that when he received the Notice of Hearing along with the s.82 Tenant Form ('Form'), he was concerned about the s.82 issues, enough to complete the

Form, but was not aware that he was required to forward the same to both the Landlord and the Board. The Tenants further submitted they did not have the opportunity to seek legal representation, and that the Landlord could just review the same now, given they are aware of their concerns.

11. The Landlord's Legal Representative submitted even if he had seen the evidence on the portal prior to today, he would not have been able to meet with his client to review the Tenants' evidence and prepare a reply in compliance with the Act. Moreover, the form provided by the Board clearly provides the instructions to serve the Board and the Landlord within the prescribed time in compliance with the Act.

The Tenants Cannot Raise Section 82 Issues

12. It was the Tenant, James Rhyndress' ('JR') evidence that while he was aware he needed to complete the Form provided by the Board in advance of the hearing as per the Rules, he erred in not serving the Landlord and the Landlord's Legal Representative. It was noted to the Tenants, while they did not have the opportunity to seek legal representation, they had the opportunity to contact Tenant Duty Counsel as outlined in the Notice of Hearing received, and they did not do so, further the Tenants declined to speak to Tenant Duty Counsel prior to this proceeding. I am satisfied that the Tenants could have complied with the timelines and procedures required by the Act and Rules. Finally, there was potential prejudice to the Landlord in the proceeding today.
13. As a result, the Tenants were not permitted to raise any issues under s.82 of the Act. The Tenants were permitted to provide evidence under s.83 of the Act. This is without prejudice to the Tenants bringing a separate application, assuming they are not out of time to do so.

The L1 Application

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 \$1,300.00. It is due on the 1st day of each month.
17. The Tenants testified that the lawful rent should in fact be \$1,250.00 each month, as they were never served a Notice of Rent Increase.
18. The Landlord's Legal Representative submitted that the Tenant paid the lawful rent of \$1,300.00 for the last time on January 6, 2023, for January 2023 rent. Thereafter rent arrears have been accruing as outlined in the Landlord's L1-L9 update sheet.
19. The Landlord further submitted a screen shot of the Landlord's bank statement indicating the interac e-transfer received from the Tenant, JR of \$1,300.00 on January 6, 2023. The Tenants objected to this submission, I allowed the submission into evidence given the Tenants were aware of what payments they previously made to the Landlord and marked the screen shot as Exhibit 1.

20. Section 135.1(1)(2)(3) of the Act states:

135.1 (1) An increase in rent that would otherwise be void under subsection 116 (4) is deemed not to be void if the tenant has paid the increased rent in respect of each rental period for at least 12 consecutive months.

(2) Subsection (1) does not apply with respect to an increase in rent if the tenant has, within one year after the date the increase was first charged, made an application in which the validity of the rent increase is in issue.

(3) For greater certainty, if subsection (1) applies with respect to an increase in rent, section 116 is deemed to have been complied with.

21. Thus, I have determined that the lawful rent is in fact \$1,300.00 per month, due on the first day of each month as conferred by s.135.1 of the Act which deems the rent or rent increase lawful one year after it is first charged that would otherwise be void under subsection 116(4) of the Act, unless an application is filed within that year, challenging the rent. There was no application challenging this by the Tenants.

22. 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.

23. The Tenants have paid \$1,250.00 to the Landlord since the application was filed.

24. The rent arrears owing to March 31, 2024, are \$11,250.00.

25. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

26. There is no last month's rent deposit.

Mandatory Denial of Eviction and Relief from Eviction

27. The Tenants submit the Landlord was in serious breach of its obligations such that eviction must be denied under s. 83(3)(a) of the *Residential Tenancies Act, 2006* (the 'Act').

28. Subsection 83(3)(a) of the Act provides that 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.

29. Where the Board is satisfied that the landlord is in **serious** breach of the landlord's responsibilities under the Act or any material covenant in the tenancy agreement, it is mandatory to refuse the landlord's application for eviction. In addition to being serious, the Landlord's breach, whether of their responsibilities under the Act or of a material covenant, must also be occurring at the time of the hearing.

30. The Act does not define "serious breach".

31. The leading case of the Divisional Court which outlines the test for a "serious breach" is *Puterbough v. Canada Public Works and Government Services* [2005] O.J. No 5727. In that case, the court interpreted a "serious breach" in the context of a landlord's statutory

duty to repair and maintain the rental unit. At paragraph 22, the Court stated that a “serious breach”, in the context of the Landlord’s maintenance responsibilities:

Means more than the rental premises being in a poor condition and in need of significant work...In short, a serious breach of the landlord’s responsibilities is not established simply by the rental premise being in need of extensive repairs.

32. The purpose of subsection 83(3)(a) of the Act is to ensure landlords do not rely on an eviction of Tenants as a means of circumventing their statutory obligations under the Act. That said, when addressing a Tenant’s arguments pertaining to the landlord’s alleged breaches in that case, the Court went on to state: “To accept the Tenant’s argument that all breaches of the Landlord’s responsibilities that raise health and safety concerns trigger subsection 83(3)(a) of the Act would render meaningless the word ‘serious’ in that subsection.”
33. In *Puterbough*, the Court held that the wording of subsection 83(3)(a) of the Act is in the present tense meaning that the serious breach must be ongoing at the time of the hearing before the Board, not in the past or potentially in the future, and the onus is on the Tenants’ to prove this.
34. The Tenants’ arguments fall under the category of maintenance. The bulk of the Tenants’ arguments and evidence relate to the allegations that the Landlord is complacent with the current state of the rental unit and in breach of the Act.
35. Based on the evidence before me I find that the Landlord, even if in violation of the Act – on which I make no determination in this application- was not in serious breach of its obligations under the Act or any material covenants of the tenancy agreement.
36. The Tenants raised:
 1. Structural issues with the main support beam in the basement of the rental unit;
 2. The septic tank malfunctioning;
 3. Windows in disrepair;
 4. Hydro and Water System;
 5. Cracks in the walls throughout the rental unit.
37. The Tenants alleged that the Landlord was in a serious breach in relation to the abovementioned issues. The Tenant, JR testified that the main support beam in the rental unit seemed to be warping and twisting, and he considers the problem is serious, and that he is not sure when the issues started or when he notified the Landlord. The Tenant, JR also testified he believes the cracks in the walls throughout the rental unit are due to the main support beam issue, and he was not sure when the issue started or when he notified the Landlord.
38. The Tenant, JR testified that the Landlord refused to empty the septic tank due to nonpayment of rent by the Tenants and there was raw sewage backing up into the lavatory and his mother-in-law who is dealing with a terminal illness was subjected to not having

lavatory facilities for three days, until the Tenants took it upon themselves to remedy the issue at a cost of \$446.00.

39. The Tenant, JR testified that the windows in the rental unit are in utter disrepair to the point of falling in and out, and he could fit a screwdriver in the space between the frame and the windows. The Tenant submits they may have been originally installed incorrectly, and that he has attempted to alleviate the problem the best he could. The window disrepair in the rental unit has been an issue since the commencement of the tenancy, approximately 7 years. The Tenant JR is not sure when he notified the Landlord of the window issue.
40. Finally, the Tenant JR testified regarding the hydro and water system issues with the rental unit. The Tenant JR submitted that he was forced to purchase chlorine for the water system during the pandemic at his own cost and the hydro that he paid for covered other units of the residential complex. The Tenant JR is not when he notified the Landlord of these issues as it had been some time ago, during the pandemic.
41. The Landlord's Director, Na Li ('NL') testified that she had not been notified nor is aware of any maintenance issues in relation to the rental unit by the Tenants.
42. I note that many of the issues raised by the Tenants are in the past and/or were not in issue at the time of the hearing. Nonetheless, I have considered the evidence regarding these issues as they were presented with respect to maintenance issues with the rental unit.
43. While many of these issues could be the subject of an application by the Tenants, I am not satisfied that they constitute a serious breach within the meaning of section 83(3)(a) of the Act. I make this finding in the context of section 83(3) only.

Additional Considerations – Relief from Eviction

44. I 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.
45. The Landlord's Legal Representative submitted that the Landlord had not attempted to work out a payment plan since the application was filed, as the Tenants had not made any attempts to reduce their rent arrears owing, even after repeated requests. Moreover, based on the Tenants' evidence, in my view a payment plan would not be appropriate given the Tenants' current life circumstances, income sources, and monthly expenses. The Tenants would not be able to cover the monthly rent, their expenses, let alone the arrears.
46. I note the Tenants' monthly income as submitted by Tenant JR is \$3000.00 and the monthly expenses of follows:

- A) Rent \$1,300.00 per month;
- B) Vehicle payments, car insurance & fuel \$1,100.00 per month;

C) Groceries \$1,600.00 per month;

It is clear the Tenants are unable to afford the current accommodations, along with their monthly expenses and arrears owing.

47. This order contains all the reasons for decisions within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants voids this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$11,486.00 if the payment is made on or before April 27, 2024. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after April 27, 2024, but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before April 27, 2024.**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$10,082.72. 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 Tenants shall also pay the Landlord compensation of \$42.74 per day for the use of the unit starting March 29, 2024, until the date the Tenants moves out of the unit.
7. If the Tenants does not pay the Landlord the full amount owing on or before April 27, 2024, the Tenants will start to owe interest. This will be simple interest calculated from April 28, 2024, at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before April 27, 2024, then starting April 28, 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 April 28, 2024.

April 16, 2024

Date Issued

Panagiotis Peter Roupas
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 October 28, 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 27, 2024

Rent Owing To April 30, 2024	\$12,550.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$1,250.00
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	- \$0.00
Total the Tenants must pay to continue the tenancy	\$11,486.00

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

Rent Owing To Hearing Date	\$11,146.72
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$1,250.00
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	- \$0.00
Total amount owing to the Landlord	\$10,082.72

Plus daily compensation owing for each day of occupation starting March 29, 2024	\$42.74 (per day)
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