



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

**Citation:** Safian v Varadi, 2024 ONLTB 12012

**Date:** 2024-08-23

**File Number:** LTB-L-066147-22

**In the matter of:** Main Level, 784 SCARBOROUGH GOLF  
CLUB RD  
SCARBOROUGH ON M1G1J1

**Between:** Shazada H Safian Landlord

**And**

Nikolett Varadi Tenant

Shazada H Safian (the 'Landlord') applied for an order to terminate the tenancy and evict Nikolett Varadi (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. (L1 Application)

Shazada H Safian (the 'Landlord') applied for an order to terminate the tenancy and evict Nikolett Varadi (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant; (L2 Application)
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises. (L2 Application)

Shazada H Safian (the 'Landlord') also applied for an order requiring Nikolett Varadi (the 'Tenant') to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex. (L2 Application)

Shazada H Safian (the 'Landlord') also applied for an order requiring Nikolett Varadi (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest. (L2 Application)

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on November 29, 2023.

Only the Landlord, the Landlord's Legal Representative, Umang Dwivedi, and the Landlord's Agent, Shazadi Asma, attended the hearing.

As of 9:40 AM, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Following the hearing, the Tenant signed in at 10:23 AM. As the Landlord and Landlord's Legal Representative had already left the hearing room, the Tenant was informed that the matter was heard in their absence, and they will receive this order which will set out the steps they can take.

## **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 \$2,325.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$76.44. This amount is calculated as follows: \$2,325.00 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 November 30, 2023, are \$37,200.00.
7. The *Residential Tenancies Act, 2006* (the 'Act') sets the jurisdictional monetary limit the Board can order is the same as the Ontario Small Claims Court, at \$35,000.00. The Landlord was advised that should they wish to receive an order to recover the full amount owing, they would need to withdraw this application and file a claim with the Ontario

Superior Court of Justice. The Landlord understood the monetary limit of the Board and waived any arrears over the monetary limit should the tenancy be terminated.

8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$2,325.00 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.
10. Interest on the rent deposit, in the amount of \$101.76 is owing to the Tenant for the period from March 1, 2022, to November 29, 2023.

### L2 Application

11. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated.
12. The Tenant was in possession of the rental unit on the date the application was filed.

### N5 Notice of Termination

13. On September 28, 2022, the Landlord gave the Tenant a first, voidable N5 notice of termination, deemed served the same day. The N5 notice of termination outlined a number of incidents including, the backyard of the rental property was covered in the Tenant's dog feces, the driveway and side entrance of the rental property has huge amounts of garbage, scraps, used furniture and debris all over, broken window near the main entrance of the rental property, and noise complaints due to loud music throughout the evening and into the early hours of the morning. As the Landlord gave the first N5 notice to the Tenant, the Landlord was allowed to give the Tenant a second, non-voidable N5 notice of termination under section 68 of the *Residential Tenancies Act, 2006 (Act)*.
14. On November 2, 2022, the Landlord gave the Tenant a second N5 notice of termination, deemed served on the same day. The notice of termination contains the following allegations: debris, used furniture, scraps and kitchen garbage in the driveway and along the side entrance of the house, and the glass window near the front entrance is broken.

### Substantial Interference

15. The Landlord has alleged that the Tenant, an occupant of the Tenant's rental unit, or a person permitted in the residential complex by the Tenant has allowed their dog to defecate in the backyard without cleaning it up, created a mess on the property by storing

junk and other items, caused damage to the property by breaking the front window, and has been playing music late at night causing the neighbours to complain and call the City.

16. Based on the uncontested testimony, and photos submitted by the Landlord, I find this conduct has substantially interfered with the Landlord's reasonable enjoyment of the residential complex as the property is a mess, damage to the front window, and calls from neighbours and the City regarding the Tenant's behaviour and noise.

#### Willful or Negligent Damage

17. The Landlord has alleged that the Tenant, an occupant of the rental unit, or a person permitted in the residential complex by the Tenant has wilfully or negligently caused undue damage to the rental unit by breaking the front window.
18. As the Tenant did not attend the hearing, I was unable to hear any evidence from them regarding the broken window. The Landlord submitted that they believed it to be damaged wilfully or negligently damaged by the Tenant or a guest of the Tenant.
19. The Landlord spoke to the Tenant previously regarding the broken window, trying to discuss repayment for the cost to repair or replace it, with no success.
20. As such, I find that the Tenant, an occupant of the rental unit, or a person permitted in the residential complex by the Tenant has wilfully or negligently caused undue damage to the front window of the rental unit.

#### Compensation for Damages

21. As I have found that the Tenant wilfully or negligently caused undue damage to the front window, the Tenant shall pay to the Landlord the reasonable cost to repair or replace the damaged broken window if it cannot be repaired.
22. Based on the evidence presented by the Landlord, I find that it is reasonable that the Tenant shall pay the Landlord \$300.00, as requested, for the cost to repair or replace the broken window.

#### Compensation for Substantial Interference

23. The Landlord alleged that the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex substantially interfered with the reasonable enjoyment of the residential complex by the Landlord or another lawful right, privilege, or interest of the Landlord. The Landlord has received multiple calls from neighbours regarding the noise complaints and the mess and garbage in the driveway and side entrance of the house. This has caused substantial interference with the Landlord's reasonable enjoyment of the rented premises.
24. The Landlord sought the reasonable out-of-pocket expenses of \$186.00 in the application but did not provide any evidence with respect to the out-of-pocket expenses regarding the

driveway and side entrance issues, as such, I find the Landlord has not proven that they incurred or will incur reasonable out-of-pocket expenses in regards to this claim.

25. Additionally, the Landlord has not proven that these expenses were incurred or will be incurred as a result of the substantial interference caused by the Tenant. As such, this claim in the application is dismissed.

### Daily Compensation

26. The Landlord is entitled to daily compensation and being reimbursed for the filing fee, which is addressed above in the L1 Application.

### Relief from Eviction

27. Section 83 of the Act requires that I consider all the circumstances, including the Tenant's and the Landlord's situations to determine if it would be appropriate to grant section 83 relief from eviction.
28. The Landlord's representative advised that the Landlord has tried to reach out to the Tenant for a repayment plan, even met with the Tenant's to go over possible payment plans, however the Tenant's have not responded to the Landlord's attempts to contact since.
29. The Tenant has failed to pay the rent as it has fallen due and there is substantial rent owing and the Tenant did not attend the hearing, and thus did not provide any evidence that may be relevant to my determination under s. 83 of the Act.
30. The Landlord indicated that the Tenant has 2 young children and have a language barrier but had no other information for me to consider regarding the Tenant's circumstances.
31. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 and whether the Landlord attempted to negotiate a repayment agreement with the Tenant, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

### **It is ordered that:**

#### L1 Application

1. The tenancy between the Landlord and the Tenant is terminated under the L2 Application of this order.

2. **The Tenant may void the L1 portion of this order by paying to the Landlord or to the LTB in trust:**
  - \$60,636.00 if the payment is made on or before September 3, 2024. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void the L1 portion of 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 3, 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 pays the amount required to void the L1 portion of this order the Tenant must still move out of the rental unit on or before September 3, 2024.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$34,851.00. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$76.44 per day for the use of the unit starting November 30, 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 3, 2024, the Tenant will start to owe interest. This will be simple interest calculated from September 4, 2024, at 7.00% annually on the balance outstanding.

### L2 Application

8. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before September 3, 2024.
9. If the unit is not vacated on or before September 3, 2024, then starting September 4, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 4, 2024.
11. The Tenant shall pay to the Landlord \$300.00, which represents the reasonable costs of repairing the damage and/or replacing the damaged broken window.
12. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
13. The total amount the Tenant owes the Landlord is \$486.00.
14. If the Tenant does not pay the Landlord the full amount owing on or before September 3, 2024, the Tenant will start to owe interest. This will be simple interest calculated from September 4, 2024, at 7.00% annually on the balance outstanding.

**August 23, 2024**

**Date Issued**

\_\_\_\_\_  
 Kevin O'Brien  
 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 4, 2025, 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 if the payment is made on or before September 3, 2024**

Rent Owing To August 31, 2024	\$60,450.00
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>Total the Tenant must pay to continue the tenancy</b>	<b>\$60,636.00</b>

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

Rent Owing To Hearing Date	\$37,091.76
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 of the last month's rent deposit	- \$2,325.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$101.76
<b>Total amount owing to the Landlord</b>	<b>\$34,851.00</b>

Plus daily compensation owing for each day of occupation starting November 30, 2023	\$76.44 (per day)
--	----------------------