



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** The Avenel Non-Profit Housing Corporation v Thomas, 2024 ONLTB 60581

**Date:** 2024-08-20

**File Number:** LTB-L-025154-23

**In the matter of:** 816, 262 RIDLEY BLVD  
TORONTO ON M5M4N6

**Between:** The Avenel Non-Profit Housing Corporation Landlord

**And**

Sharon Thomas Tenant

The Avenel Non-Profit Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Sharon Thomas (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 25, 2024.

The Landlord's Agent S. Smith, the Landlord's Legal Representative J. Paine, the Tenant and the Tenant's Legal representative K. Warwick attended the hearing.

### Determinations:

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 \$624.00. It is due on the 1st day of each month. It is undisputed that the rent charged in this matter is subject to a rent-geared-to-income ("RGI") subsidy.
4. Based on the Monthly rent, the daily rent/compensation is \$20.52. This amount is calculated as follows: \$624.00 x 12, divided by 365 days.
5. The Tenant has paid \$1,530.00 to the Landlord since the application was filed.
6. The Landlord's Agent testified that the rent arrears owing to June 30, 2024 are \$21,422.23. The Landlord's Agent stated that the Tenant was provided with a notice of decision in relation to the rent increases and is able to challenge the decision by following the internal process under the *Housing Services Act, 2011*. The Landlord's Agent testified that the Tenant has not complied with the requirements for internal reviews and has refused to provide the Landlord the necessary information in respect of the Tenant's financial situation.

7. The Landlord's Agent testified that there was an internal administrative error in respect to the rent calculation in 2022; however, the Landlord addressed the error as soon as it was known and the errors actually resulted in the Tenant's favour. Specifically, though based on the Landlord's information the Landlord should have charged the Tenant \$820.00 in rent starting 2022, the error led the Landlord to keep the rent at \$614.00, benefitting the Tenant.
8. The Tenant testified that they are opposed to the quantum of arrears as stated by the Landlord because the recalculations of rent that informed the Landlord's formulation of the arrears arose from increases that were not made in accordance with the notice provisions of the *Residential Tenancies Act, 2006* ("the Act").
9. The Tenant's Legal Representative submitted that the Landlord's failure to serve the Tenant with an N2 notice of rent increase in support of the rent increases means that the lawful monthly rent remains as it was prior to the increase. The Tenant's Legal Representative submitted that the Board is required to make a determination as to the lawfulness of the Landlord's rent increase and submitted several cases in support of their position, most of which I do not find relevant to the decision before me:
  - *Fadeev v Edwards*, 2020 CanLII 119187 (ON LTB): Nothing in the decision indicates the rent charged was based on an RGI subsidy, and the determinative fact was that the parties had verbally agreed to decrease the rent but the Landlord included the previous rent on the N4 notice. I find the decision distinguishable from the facts before me.
  - *EAL-76016-18-RV (Re)*, 2018 CanLII 140437 (ON LTB): The Vice-Chair explicitly stated that they lacked jurisdiction to order the landlord to reinstate the Tenant's subsidy or to extend the time provided for the tenant to file the documentation required for internal review. While the Vice-Chair notes that the landlord chose to send the tenant an N2 notice, nothing in the decision supports the Tenant's Legal Representative's position in the matter before me.
  - *Toronto Community Housing Corp v Zelsman*, 2017 ONSC 5289 (Ont Div Ct) (CanLII) dismissing the appeal of the Board's orders in TSL 17126-11 and TSL-26309-12: The rental unit that was the subject of the original applications was not an RGI unit, so the matter is distinguishable from the situation before me.
  - *TSL-56119-14 (Re)*, 2014 CanLII 78360 (ON LTB): The tenant in this matter disputed having received a Notice of Rent Increase ("NORI") and was found to have been served with one. The matter is distinguishable because there was no dispute that the Tenant was no longer entitled to their rent subsidy, nor any discussion about whether the failure to serve a NORI would require the Landlord to restore the previous rent subsidy.
10. The Tenant's Legal Representative also submitted for consideration the Divisional Court decision in *Belair v Ontario Aboriginal Housing Services Corporation*, 2017 ONSC 2839 (CanLII). In that decision, the Court held that the Board erred by ruling that it did not have jurisdiction to determine the rent lawfully chargeable by the landlord due to the operation of section 203 of the Act. The Court found that "the board erred in law in ruling that, by reason of s. 203, it has no jurisdiction to determine the lawfulness of the rent increases levied by the respondent."

11. While at first glance the Court's decision would appear to apply to the matter before me, I note that the RGI assistance considered in *Belair* was not payable under the *Housing Services Act*, but was "instead payable pursuant to the terms of the transfer agreement." This element was critical to the Court's decision that the Board had erred in declining to determine the lawfulness of the rent being charged. Accordingly, *Belair* is not applicable to the matter before me.
12. Given there was no dispute that the rent charged in this matter is subject to an RGI subsidy under the *Housing Services Act, 2011*, I prefer the Landlord's Agent's testimony that the changes in lawful rent resulted solely from recalculations made under the RGI scheme. Pursuant to section 203 of the Act, the Board is prohibited from making determinations on the amount of geared-to-income rent payable under the *Housing Services Act, 2011*. At such, I accept the Landlord's position on the amount of rent arrears.
13. The rent arrears owing to June 30, 2024 are \$21,422.23.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The Landlord collected a rent deposit of \$167.88 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.
16. Interest on the rent deposit, in the amount of \$6.23 is owing to the Tenant for the period from January 1, 2023 to June 25, 2024.

#### Relief from eviction

17. The Landlord's Legal Representative requested a standard order on the bases that the amount of the arrears is significant, the Tenant has made no attempt to pay the lawful rent in full or to repay the arrears, and the Landlord's budget and ability to maintain their properties will be impacted if tenants are permitted to withhold rent. The Landlord's Legal Representative submitted that, at most, the eviction should be postponed by 30 days.
18. The Tenant testified that they have been on social assistance for 2 and a half years and that they are a person with a disability. The Tenant is not employed. The Tenant stated that their 34-year-old and 24-year old sons both live with the Tenant, and that the oldest is not able to find employment while the youngest is only able to work 2-3 hours each day so works part-time. The Tenant noted that they do not want to move to a smaller unit because separating their sons would negatively impact their sons' mental health.
19. The Tenant stated that they have bad credit and do not qualify for rent banks, so they will have difficulty finding affordable housing. The Tenant testified that they are not able to pay the lawful monthly rent and make arrears payments without borrowing the money. The Tenant testified that they also care for their elderly mother with dementia.
20. During the hearing, the Tenant claimed that the Landlord's Agent had behaved unprofessionally and harassed the Tenant, but when asked for details the Tenant declined to discuss the claims further.

21. The Tenant requested a postponement of any eviction by 3 to 6 months, but the Tenant did not articulate what additional activities they would undertake given such an extended period.
22. The parties do not dispute that the Landlord offered to negotiate a repayment plan with the Tenant.
23. 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 September 30, 2024 pursuant to subsection 83(1)(b) of the Act.
24. While there will potentially be some additional financial prejudice associated with the Tenant being permitted to remain in the rental unit for an additional month, I find that postponing the eviction is not unfair given that the Landlord has not demonstrated any direct and current impacts associated with the Tenant's outstanding arrears. Further, the Tenant's evidence is that they are a person with a disability with significant caregiving responsibilities and limited means. I am satisfied in the circumstances that it is not unfair to postpone the Tenant's eviction to allow some additional time to locate alternate housing. However, I find that the 3 to 6 month delay requested by the Tenant would be unfair in the circumstances due to the Tenant's stated inability to pay the rent and arrears.

**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:**
  - \$22,856.23 if the payment is made on or before August 31, 2024. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$23,480.23 if the payment is made on or before September 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 September 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 September 30, 2024.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$21,323.12. 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 \$20.52 per day for the use of the unit starting June 26, 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 September 30, 2024, the Tenant will start to owe interest. This will be simple interest calculated from October 1, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before September 30, 2024, then starting October 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 October 1, 2024.

**August 20, 2024**

**Date Issued**

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Tiffany Ticky

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 April 1, 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 to void the eviction order and continue the tenancy if the payment is made on or before August 31, 2024**

Rent Owing To August 31, 2024	\$24,200.23
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	- \$1,530.00
<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>\$22,856.23</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before September 30, 2024**

Rent Owing To September 30, 2024	\$24,824.23
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	- \$1,530.00
<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>\$23,480.23</b>

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

Rent Owing To Hearing Date	\$22,841.23
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	- \$1,530.00
<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	- \$167.88
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$6.23
<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 amount owing to the Landlord</b>	<b>\$21,323.12</b>
Plus daily compensation owing for each day of occupation starting June 26, 2024	\$20.52 (per day)