



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

**Citation:** Shathiyaseelaan v Gardner, 2024 ONLTB 13973

**Date:** 2024-02-23

**File Number:** LTB-L-046370-23

**In the matter of:** 78 KEYWOOD ST  
AJAX ON L1Z2E4

**Between:** Hindumathi Shathiyaseelaan  
Shathiyaseelaan Alagarsamy

Landlords

### **And**

Darlene G Gardner  
Damien Ray Gardner

Tenants

Hindumathi Shathiyaseelaan and Shathiyaseelaan Alagarsamy (the 'Landlords') applied for an order to terminate the tenancy and evict Darlene G Gardner and Damien Ray Gardner (the 'Tenants') because the Tenant did not pay the rent that the Tenants owe.

This application was heard by videoconference on November 16, 2023, and February 15, 2024.

The Landlord Legal Representative Thirusenthuran Sivapatham, the Landlords and the Tenant Darlene Gardner attended the hearing.

### **November 16, 2023, hearing:**

1. The Landlords were not represented at this hearing.
2. The Landlord's confirmed that they had selected a French language hearing in error, and therefore the application proceeded in English only.
3. The Landlord did not file a certificate of service with the application setting out how and when the Tenants were served the N4 notice of termination.
4. The Landlord stated that it had been sent by email to the Tenants. However, the lease agreement did not provide that service of documents by email had been agreed to by the

parties. This means that this was not deemed effective service in accordance with the Boards Rules.

5. The Landlord also stated that the N4 notice of termination had been hand delivered to the Tenant Darlene Gardner and mailed to both Tenants.
6. I was satisfied that service of the N4 notice of termination had been properly served on the Tenant.
7. The Landlord requested to amend their application to reflect that the rent for May 2023 was \$3,100.00. The amount listed in the application included utilities. The Board consented to this amendment.
8. The hearing was adjourned to permit the Tenant to serve and file the form setting out issues a Tenant can raise at a hearing along with their evidence, and for the Landlord to provide any submissions in response.

### **Determinations:**

#### Preliminary issues:

1. The courts and this tribunal have recognized that the Board has broad authority to control its own processes. The Tribunal also has authority to impose a monetary fine or costs on parties, including their legal representatives.
2. The Board was compelled to caution the Legal Representative that his conduct was amounting to an unacceptable lack of courtesy and professionalism towards the presiding Adjudicator. The representative was not abiding by instructions issued and insisted on making demands while speaking over the Adjudicator.
3. The representative was also cautioned that he should maintain control over his clients that were in his office to ensure that during testimony that there was no coaching of a witness from someone off-camera.
4. The representative also claimed that he was having technical issues with his camera, in that it was turning itself off on its own. He was reminded to turn it on, whenever that occurred.
5. The hearing is not the time to be learning the process of a hearing. In this instance, the Tenant had provided their evidence in chief, and was cross-examined by the Landlord's Legal representative, and then was afforded the final redirect to provide any additional evidence after responding to the cross-examination. That ends the Tenant's evidence. It is not a game of ping pong where parties go back and forth until they have exhausted all of their questions and finally submitted all of their evidence. That would not be an effective nor efficient use of time.

6. In other words, there is a “direct examination” followed by the “cross-examination” and followed by the “re-examination”. This is an established procedure in the practice of law that one would expect a licensee of the Law Society to be familiar with and need not be taught in the middle of a hearing.
7. The re-examination should be narrow in scope to respond to questions arising from cross-examination that could not have been anticipated on direct examination. In instances where a party is self-represented the Board shows some latitude given their unfamiliarity with legal processes.
8. If on re-examination new evidence is submitted, that is the proper time where a competent representative should raise any objections. Conversely if no objections are raised, the representative may make submissions on this evidence that had not been subject to cross-examination. It is not reasonable to sit on one’s hands and expect that a cross-examination could ensue. Therefore, the Landlord’s demands to continue with a subsequent cross-examination was denied.
9. Finally, I would note that the representative stated that they did not review the adjudicative record and was not familiar with the contents stating that he was not the legal representative when submissions were made prior to the November 16, 2023, hearing. The representative acknowledged that he had a professional obligation to be familiar with the adjudicative record, so as to not unduly delay the proceedings while he reviewed them with his clients. Fortunately, there was time for this, and an adjournment had not been required.
10. The Tenant did not disclose in accordance with section 82 of the Act a list of issues and proof. Therefore, there shall not be a remedial order to compensate the Tenant, notwithstanding the findings set out in this order. The Tenant is advised to seek legal advice to determine if they should submit a Tenant application in the future and seek a remedy in that forum.

L1 Application:

11. 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.
12. As of the hearing date, the Tenant was still in possession of the rental unit.
13. The lawful rent is \$3,100.00. It is due on the 1st day of each month.
14. Based on the Monthly rent, the daily rent/compensation is \$101.92. This amount is calculated as follows: \$3,100.00 x 12, divided by 365 days.
15. The Tenant has paid \$6,077.10 to the Landlord since the application was filed.
16. The rent arrears owing to February 29, 2024, are \$22,451.90.

17. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
18. The Landlord collected a rent deposit of \$3,100.00 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.
19. Interest on the rent deposit, in the amount of \$92.79 is owing to the Tenant for the period from December 6, 2022, to February 15, 2024.

Relief from Eviction:

20. Section 83 of the *RTA* ensures that the LTB will carefully consider the impact of eviction in the context of each application. This section ensures that the LTB considers all circumstances and the fairness of a decision to evict or a refusal to evict.
21. A failure to consider section 83 is an error in law: see *Musse v. 6965083 Canada Inc.*, 2021 ONSC 1085 at para. 58.
22. I have considered all of the disclosed circumstances in accordance with subsection 83(2) and 83(3)(b) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to grant relief and refuse eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

Subsection 83(6)

23. Subsection 83(6) of the Act directs the Board to consider the efforts of the Landlord to negotiate an agreement for the repayment of arrears of rent:

**Refusal for certain arrears of rent**

(6) Without restricting the generality of subsections (1) and (2), if a hearing is held in respect of an application under section 69 for an order evicting a tenant based on arrears of rent arising in whole or in part during the period beginning on March 17, 2020 and ending on the prescribed date, in determining whether to exercise its powers under subsection (1) the Board shall consider whether the landlord has attempted to negotiate an agreement with the tenant including terms of payment for the tenant's arrears.

24. The Legal Representative stated that the Landlord had made efforts and that his clients had advised him of those efforts.
25. The representative was not aware of the full contents of the adjudicative record and this passage is taken from the Landlord's submissions included with the L1/L9 update for the November 16, 2023, hearing:

This tenant stopped to pay her partial payments and direct deposits [August 2023 onwards], once she got to know that we filed L1 through LTB; **That made us on our decision to evict the tenant completely without negotiations.** (emphasis added)

26. Since this indicates that the Landlord had no intention of negotiating with the Tenant once their application had been filed, the representative was asked to explain the discrepancy between his testimony about efforts and the Landlord's own statements in the adjudicative record.
27. The representative re-stated that he had been advised by his clients that they did try prior to August 2023, and nothing ever came of it.
28. I did not find the evidence and statements of the representative to be credible, particularly given that this was not put to his client as a witness regarding any efforts prior to August 2023.
29. The Landlord witness did voluntarily state without prompting that they had attempted to negotiate with the Tenant but that they did not trust the Tenant to make the payments. I did not find this aspect of testimony on this topic to be credible because it did not address the statement above that they wanted an eviction without negotiations.
30. The Landlord submitted that given the quantum of arrears that the eviction should proceed because there had been some effort to negotiate with the Tenant.
31. I am of the view that Landlord has an ongoing legal obligation to make some effort to attempt to negotiate a payment plan for arrears. That could be as little as sending a letter each month with a statement of account and extending an invitation to negotiate a repayment plan in order to avoid a hearing. I am not saying that any efforts must result in a repayment agreement, since it may be that parties cannot come to amenable terms; however, there must be in my view ongoing good faith efforts to attempt to negotiate.

#### Subsection 83(3)(a)

32. Subsection 83(3)(a) directs that the Board must refuse eviction if the Landlord is in serious breach of their obligations under the Act:

#### **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;

33. In order to engage the mandatory refusal of eviction under subsection 83(3)(a), the Landlord must be in serious breach of the Act, and that breach must be continuing at the time of the hearing. (see for example TNL-06234-18 (Re), 2018 CanLii 113896 (ON LTB); Neville v Baron, 2021, CanLii 80945 (On LTB)).
34. Although "serious" is not defined in the Act, the Board has found that it is not a mere breach of the Act, but that it must be sufficiently egregious that refusal of a Landlord's right to seek eviction is a reasonable outcome.

35. The issue put to the Landlord is did the Landlord seriously breach the Tenant's right to reasonable enjoyment of the rental unit by denying permission for the Tenant's daughter to move into her parents rental home?
36. The document labelled "Landlord's evidence dated February 12, 2024", at pages 9 and 10 show that the Landlord had refused permission for the Tenant to allow her daughter to come live her and assist with the rent and other expenses.

First of all based on rental agreement that you have signed and agreed to follow this:-

"The tenant agrees to use the premises as residential and for no other purposes and not to allow the premises to be occupied by anyone other then the person listed in the agreement"

Therefore I am totally disagree with any other person to stay.

If you would have kept the promise and paid the rent and utilities at least I would have considered this for you. But you did not do this.

37. The Landlord Hindumathi Shathiyaseelaan testified that they did not trust the Tenant to pay rent, even with the daughter's help. That if the daughter moved in that she would use water and run the expense (expenses that the Tenant was responsible for under the lease agreement). She stated that this was really stressful for her.
38. The Landlord also testified that she thought the Tenant was asking her to make a false letter, and for that reason as well they denied permission for the daughter. The Tenant request states:

My daughter came to stay with me to try to help me catch up on rent and bills as of June 1st however she is on Ontario works due to her medical condition and usually a simple letter from me stating that she is paying me \$500 monthly would do for her worker but they require to talk to the owner of the house. or if the owner can provide a letter stating that it is ok for her to stay here and her portion of the rent is \$500.00. until they have this information they have cut her from Ontario works.

39. The Tenant request was sent via email to the Landlord on July 19, 2023. It shows that the Tenant daughter had moved in and was not coming sometime in the future. The Tenant was asking for a letter from the Landlord stating that it was "ok" for the daughter to be living with her mother in the rental unit.
40. I find that the condition restricting occupants only to those listed in the rental agreement to be of no force and effect. This is an unreasonable restriction and interferes with the reasonable enjoyment of Tenants to have guests, or occupants, and in this case to permit a parent to let a child move into their parents' home. There is no indication that this was done to avoid overcrowding, since this is a 4-bedroom rental that could easily accommodate the daughter.

41. The Landlord submitted that it was acceptable for the daughter to stay as a guest or an occupant, and that they would not interfere with that. They simply refused to say she could be a tenant, because of a loss of trust with the Tenant. I do not find this submission reasonable and have given it little weight.
42. The Tenant was making partial payments towards rent at that time, and this refusal defies logic. The Landlord wanted the Tenant to pay the arrears and utilities and the very thing that the Tenant was trying to do for the Landlord was to pay them. The Landlord's refusal amounts to in my view a serious breach of the Tenant's right to reasonable enjoyment of the rental unit. This serious breach remains ongoing as the Landlord continues to refuse to provide a letter granting permission for the daughter to stay. This would in effect be creating a sub-tenancy where the daughter enters into a lease agreement with her mother and does not implicate the Landlord's in any way.
43. Because the refusal of the Landlord to permit the Tenant daughter to occupy the rental unit, the Tenant had to hide from view any evidence that her daughter was living in the rental unit. When the Landlord arrived under the guise of a home inspection, the Landlord was upset that they were denied access to a room where the Tenant daughter had her things in storage while she "resided in a tent".
44. The Landlord testified that they had just coincidentally brought the Landlord's babysitter along for the inspection to show him his room when they moved back into the rental unit. This was before the Landlord had broached this news with the Tenant and before they served an N12 notice of termination.
45. The Tenant stated that they would have denied access if it was for a "showing".
46. In my view the Landlord could have provided a letter stating that the daughter is permitted to reside in the rental unit. The letter need not necessarily comment on the rent being paid by the daughter to the mother, since that is a private matter that did not involve the Landlord. By refusing, it caused further stress unnecessarily amongst all the parties.
47. During the Tenant testimony they stated that the Landlord had a security system with 3 cameras in the rental and that the Landlord had control over the system with the master passcodes. They stated that even though the Tenant were given passcodes, any time there was a problem the Landlord had to use their master passcode to resolve the problems.
48. The Tenant stated that they were worried about their privacy because the cameras were recording them and that the Landlord had access to those images.
49. The Landlord testified that they believed that when the Tenants were given their own passcodes that the Landlord no longer had any access. The cameras were part of a security system installed by the Landlords that remained in the Landlord's name. The Landlord stated that there was an additional charge to the Tenant for this, although that it was not listed as a service that the Tenant was responsible to pay.
50. I am of the view that any service provided to the Tenants that are not listed as being the responsibility of the Tenant to pay in the written lease agreement, amounts to an illegal charge. However, I am not making an order regarding this, and it was not a determinative consideration in my deliberations.

51. I am however concerned for the Tenant that the Landlord has access to the recordings through the master passcode. This can be resolved by the Tenant covering up the cameras to prevent any unwelcome recordings. The Landlord may wish to cancel the service if they are not residing in the rental property and not willing or able to transfer the service into the Tenant's name.

Viable Tenancy:

52. The Tenant testified that she works, but that it has been on and off. The Tenant refused to state what their monthly income was.
53. The Tenant testified that she had stopped paying rent because the family pet needed surgery that cost \$12K. As a result, she had a hard time getting on top of payments and that the Landlord was unwilling to negotiate a payment plan.
54. I note that there was no testimony on if this expense for the family pet has been fully repaid or not.
55. The Tenant testified that their household expenses were \$300-\$500 per month for food; \$600.00 for transit; and \$300.00 Hydro per month.
56. The Tenant testified that her son does assist with rent and that his monthly income is \$733.00 per month from ODSP.
57. The Tenant testified that they had been looking for accommodations, but that the rental market made that difficult. The testimony under cross-examination held up to show that the Tenant was searching because of the N12 notice of termination that had been served, and not because she did not want to preserve the tenancy.
58. The Landlord only withdrew their L2 application at this hearing. This means that at this time the Landlord does not intend to occupy the rental unit themselves. It also does not mean that the Landlord's may not serve another N12 notice of termination for their own use in the future.
59. The Landlord submissions that the Tenant did not want to preserve the Tenancy because she had been searching for new accommodations was not given any weight because of this.
60. The Landlord submitted that they are unable to determine if the tenancy is viable because the Tenant was unwilling to disclose their monthly income.
61. I agree with the Landlord that it is difficult to assess the viability of the tenancy given the lack of candor and transparency by the Tenant. However, this is also not a long-term tenancy; it likely began in December 2022, when the last month rent deposit was collected, and it would be reasonable that the Landlord had satisfied themselves at that time that the Tenant could afford the rent and related household expenses.
62. The payment history shows that the Tenant did pay rent in full and on time for a while and then began making partial payments and finally stopped payments all together.
63. However, the Tenant was trying to find the means to repay the Landlord the arrears and the monthly rent, and yet the Landlord thwarted those efforts.



64. In considering all of the evidence and submissions regarding the viability of the tenancy, I am satisfied on a balance of probabilities that if both the son and daughter are assisting with household expenses that this could be a viable tenancy.

**It is ordered that:**

1. The Landlords request for an eviction order is refused.
2. The Tenants owe the Landlord \$22,637.90 which includes arrears of rent for the period ending February 29, 2024, and the application fee.
3. The Tenants must pay to the Landlord \$250.00 on or before the 15th day of each month beginning March 15, 2024, until the arrears of rent is paid in full.
4. If the Tenants fail to make a payment set out in paragraph 3, the Landlord may commence an action to recover the balance owing at that time.

**February 23, 2024**

**Date Issued**

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**Robert Patchett**  
Vice Chair, 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**

Rent Owing To February 29, 2024	\$28,529.00
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	- \$6,077.10
<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>\$22,637.90</b>

2024 ONLTB 13973 (CanLI)