



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

**Citation:** Investfact Development Corporation v Martineau, 2023 ONLTB 78985

**Date:** 2023-12-01

**File Number:** LTB-L-050525-22

**In the matter of:** 83 RALLIDALE ST  
OTTAWA ON K1X0G7

**Between:** Investfact Development Corporation Landlord

**And**

Paullyne Martineau and Louis Faubert Tenants

Investfact Development Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Paullyne Martineau and Louis Faubert (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

This application was heard by videoconference on September 21, 2023.

The Landlord, the Landlord's representative Sikandar Arora and the Tenants attended the hearing.

### **Preliminary Matters:**

#### *Request to combine multiple applications*

1. As per Vice-Chair Robert Patchett's Member Endorsement, the request to combine all three applications has been denied.
2. The matter being heard today is the Landlord's application for rental arrears and the Tenants section 82 submissions.

### **Section 82:**

1. The Tenants have made 2 section 82 submissions and any compensation be put towards the rental arrears. The arguments raised under section 82 are:

- Loss of heat when the outside temperature reaches below -10 C when the HVAC system is turned on, full abatement of rent for those months.
- Harassment by the Landlord and is seeking \$10,000.00 in abatement.

2. The section 82 submissions by the Tenants were heard before the L1 portion of the application.

*Harassment by the Landlord*

3. The Tenants claim persistent and aggressive harassment by the Landlord, specifically how the Landlord claimed the home would be foreclosed, and the Landlord was at risk of losing his home immediately, as soon as 9 days, if the Tenants did not pay the rent.
4. Although, I do not believe the Landlord is in an imminent threat of immediately losing their home, I do believe it is reasonable to inform Tenants what happens when a mortgage is not paid. A foreclosure is always a possibility when mortgage payments are not made. The Landlord relies on the Tenants rental payments to pay the mortgage, and the rental arrears are substantial.
5. At no time, based on the evidence provided by the Tenants do I feel the Landlord overstepped their legal boundaries in attempting to collect rent to pay the mortgage on the property.
6. The Tenants claim for harassment is dismissed.

*Loss of Heat when under -10 C*

7. The Tenants claim the heat would drop to 19C or low teenage digits when the outside temperature was below -10 C.
8. The property is a newly constructed home and was under warranty during the dates the Tenants have made these complaints.
9. On three different occasions the Landlord used his warranty to have technicians check or fix the heating system.
10. The Landlord also submitted a technician report to document inspections along with any work done and completed.
11. The Landlord testified that they understood their responsibilities of providing vital services to Tenants. In addition to testifying the Landlord did everything they could, The Landlord testified under oath he would have no reason to immediately remedy any heating situation as the house was a newly constructed home under warranty.

12. It should be noted, at no time, did any of the pipes freeze or burst in the home, which is a common occurrence should a home be without heat for an extended period over winter months.
13. It should also be noted, the Tenants did not submit any type of receipts to demonstrate they required additional heating in the home from the property being too cold.
14. In considering all the disclosed circumstances, the Tenants application for loss of heat resulting in a rental abatement is denied.

**Post Hearing Matters:**

*Amount to void the order*

1. At the time of the order being issued, the amount outstanding is above the Board's monetary jurisdiction.
2. The voiding provision for an order under Section 74 of the Act is set out in subsection 4, which provides:
  - (4) An eviction order referred to in subsection (3) is void if the tenant pays to the landlord or to the Board, before the order becomes enforceable,
    - (a) the amount of rent that is in arrears under the tenancy agreement;
    - (b) the amount of additional rent that would have been due under the tenancy agreement as at the date of payment by the tenant had notice of termination not been given;
    - (c) the amount of NSF cheque charges charged by financial institutions to the landlord in respect of cheques tendered to the landlord by or on behalf of the tenant, as allowed by the Board in an application by the landlord under section 87;
    - (d) the amount of administration charges payable by the tenant for the NSF cheques, as allowed by the Board in an application by the landlord under section 87; and
    - (e) the costs ordered by the Board. 2006, c. 17, s. 74 (4).
3. While the Board cannot order a person to pay more than \$35,000.00 in accordance with s. 207.1 of the Act, one must consider *Reed v Rosen, 2023 ONLTB 19378* which has been upheld at divisional court *Rosen v. Reed, 2023 ONSC 6482*. As such, I find that this does not apply to the "stay and pay" option set out in the order below. The order terminates the tenancy and requires the Tenants to pay the amount up to the Board's monetary jurisdictional limit of \$35,000.00 plus the cost of filing the application. The Tenants can choose to pay the full amount of arrears rent, and costs owing to the Landlord if they choose not to vacate the unit. This amount is optional and only required if the Tenants elects to continue the tenancy. Therefore, the Board is not ordering this amount to be paid and is not ordering an amount that exceeds the limit.

**Determinations:**

1. 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.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$2,695.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$88.60. This amount is calculated as follows: \$2,695.00 x 12, divided by 365 days.
5. The Tenants have paid \$21,785.00 to the Landlord since the application was filed.
6. The rent arrears owing to September 30, 2023 are \$27,010.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$2,695.00 from the Tenants 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.
9. Interest on the rent deposit, in the amount of \$124.27 is owing to the Tenants for the period from May 12, 2021 to September 21, 2023.
10. 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 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The rental arrears are substantial, and the Landlord is entitled to receive payments for the lawful monthly owed. The Tenants did not provide a viable payment plan based on their monthly expenses and their amount of income coming into home. The Tenancy has already been extended approximately 3 months from the date of the hearing and the prejudice to extend any further outweighs the prejudice of the Landlords with the substantial amount of rental arrears outstanding.

**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:**
  - \$35,281.00 if the payment is made on or before December 12, 2023. 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 December 12, 2023 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 December 12, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$23,542.33. 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 \$88.60 per day for the use of the unit starting September 22, 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 December 12, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 13, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 12, 2023, then starting December 13, 2023, 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 December 13, 2023.

**December 1, 2023**

**Date Issued**

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André-Paul Baillargeon-Smith

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 June 13, 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 December 12, 2023**

Rent Owing To December 31, 2023	\$56,880.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$21,785.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenants is entitled to	- \$0.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$35,281.00</b>

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

Rent Owing To Hearing Date	\$47,960.60
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$21,785.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$2,695.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$124.27
<b>Less</b> the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenants is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$23,542.33</b>
Plus daily compensation owing for each day of occupation starting September 22, 2023	\$88.60 (per day)