



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

**Citation:** ETHIER v LYONS, 2023 ONLTB 75939

**Date:** 2023-11-22

**File Number:** LTB-L-060056-22

**In the matter of:** 1, 265 STE-ANNE STREET VANIER  
ON K1L7C3

**Between:** SUZANNE ETHIER and RAYMOND ETHIER Landlord

**And**

KEN LYONS Tenant

SUZANNE ETHIER and RAYMOND ETHIER (the 'Landlord') applied for an order to terminate the tenancy and evict KEN LYONS (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on November 6, 2023, at 09:00 am.

The Landlords and the Tenant 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 \$1,127.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$37.05. This amount is calculated as follows: \$1,127.00 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 \$18,862.50.
7. The Landlord is entitled to \$25.00 to reimburse the Landlord for administration charges and bank fees the Landlord incurred as a result of 1 cheque given by or on behalf of the Tenant which was returned NSF.
8. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$1,100.00 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.
10. Interest on the rent deposit, in the amount of \$104.89 is owing to the Tenant for the period from February 12, 2018 to November 6, 2023.

### Section 82 Issues

11. It was the Tenants testimony that he did not pay the rent owing and didn't believe he owed the amount alleged, due to what he believed was an illegal increase in rent and several outstanding maintenance issues. He also testified that he had attempted to upload photographic and video evidence in support of his claims but received an email from the Board stating they were unable to. As a result, he wrote out descriptions for each of the issues which he scanned and sent.
12. Upon review of these submissions, I determined that they were illegible and, on this basis, I directed he could forward me the email he received from the board and we could proceed on with his oral testimony.

### Illegal Rent

13. It was the Tenants testimony that he didn't receive the Landlord's notice to increase the rent until 30 days prior to July 1, 2023 when the increase came into effect. Specifically, he testified to finding it in his mailbox and was given no other prior notice from the Landlord.
14. In response the Landlord Suzanne Either testified that she completed and served the form to the Tenant on March 27, 2023. In support of this she submitted a copy of the notice during the hearing.

### Bathroom sink

15. It was the Tenant's testimony that the bathroom sink had been overflowing and leaking since January 2022. He also testified that he had phoned and informed the Landlords about the issue at the same time. It was his position that they never addressed the issue, and he has been without a working bathroom sink since.

16. In response the Landlord Suzanne Either testified to never receiving a complaint from the Tenant. However, her husband Raymond Either had inspected it and found no issue.
17. Raymond either testified that on or about July 18, 2023, they received a complaint of a leak in the ceiling from the tenant living below the Tenant's rental unit. Upon inspection he found an accumulation of water in the ceiling which he drained, dried, sealed and painted over. He also testified to inspecting the Tenant's bathroom and found the sink was in working order. It was his belief the Tenant deliberately blocked the sink causing it to overflow as there had been no such instances since.

#### Slant in bathroom floor

18. The Tenant testified that the bathroom floor has a significant slant to the point that he believes it's a safety hazard and requires a safety bar for the shower and tub. He testified that he informed the Landlord by phone although he couldn't provide an exact date.
19. In response the Landlord Suzanne Either again testified that she was not aware of the issue and didn't recall any such phone call from the Tenant.

#### Removal of gardens

20. The Tenant testified that he had installed two gardens on the rental property consisting of both perennials and vegetables. It was his position, although that he didn't seek permission that they were an improvement to the property. However, the Landlord removed one, and directed he remove the other. He believed he should be compensated for the cost of materials and the work he put into removing the one garden.
21. In response the Landlord Suzanne Either testified that the one garden damaged the front lawn and extended on to the lane way, blocking access to the house. She also testified to asking the tenant to move it and only after he refused her husband and son did so.
22. Regarding the other garden, she testified that she requested the Tenant remove it due to receiving a complaint from the basement tenant who claimed the garden obstructed his window.

#### Illegal entry

23. The Tenant testified that on or about July 2023, after returning home from being away, the Landlord illegally entered his unit. It was his testimony that one of his neighbours informed him and that subsequent to this he noticed several personal items missing and believed he was entitled to be reimbursed the cost of those items, although he didn't have any receipts to support his claims.
24. In response the Landlord Suzanne Either testified that they always provide 24-hour notice before entering. This included prior to investigating the water leak in July 2023. It was her testimony that they had first knocked and after receiving no answer placed a notice on the door on July 18, 2023. Following this they returned on July 20, 2023, and again had no

answer. This was supported by the Notice of Entry entered in evidence. As to the items the Tenant claimed went missing, she had no knowledge.

#### Pest treatment

25. The Tenant testified that he has been living with pest, namely cockroaches for several months and the Landlord had failed to address the issue.
26. In response the Landlord Suzanne testified that she had arranged for pest control treatment to occur on October 30, 2023, however, the contractor couldn't complete the treatment as the Tenants unit was too cluttered and it would require the Tenant to move and or remove items before the treatment could occur. This was supported by a copy of the pest control service report entered in evidence.
27. In response the Tenant testified that he would have moved his items but the Landlord refused to let him erect tents on the property to store his items and he couldn't afford to place his items in a storage locker and the Landlord offered him none.
28. It was the Landlord's position that the Tenant was a hoarder and need to get rid of several items and the length of treatment wouldn't require the erecting of tents or storage.

#### Section 82 Analysis

29. Section 116 (1) and (3) of the Residential Tenancies Act, 2006 (the "Act") states:

**116 (1)** A landlord shall not increase the rent charged to a tenant for a rental unit without first giving the tenant at least 90 days written notice of the landlord's intention to do so.

**116 (3)** The notice shall be in a form approved by the Board and shall set out the landlord's intention to increase the rent and the amount of the new rent.

30. Based on the testimony and evidence before me I am satisfied on the balance of probabilities that the Landlord gave proper notice 90 days prior and used a Board approved form as evident by that submitted in evidence. Accordingly for this reason I am satisfied that the lawful rent is \$1,127.00.
31. Section 20(1) of the Act states:

**20 (1)** A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.
32. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, the Court of Appeal held that it is necessary to take a contextual approach to determining whether a landlord has breached its maintenance obligations under section 20(1) of the Act and a landlord will not

be found liable for such a breach if the landlord responded to the maintenance issue reasonably in the circumstances.

33. Applying this test to the circumstances here, I am not satisfied on the balance of probabilities that the Landlord failed to meet their maintenance obligations or that there were indeed maintenance issues requiring attention.
34. First, although I gave the Tenant the opportunity to submit the email correspondence between them and the Board indicating that his photographic evidence was unable to be uploaded, he failed to do so. Instead, he sent unsolicited photographs, statements, and videos. Accordingly, for this reason, I don't believe he did receive an email from the Board and more likely than not he hoped that by stating so would give his testimony more credibility. Unfortunately, his failure to do so has had an opposite effect and I cannot accept his testimony to be factual or accurate.
35. In contrast I cannot but find that the Landlord's testimony is more credible. Owing to the details such as dates and times, and the fact that they supported it with documented evidence. In this regard I am satisfied when they were properly made aware of an issue, they addressed it. Specifically, this was evident based on their testimony regarding the leak in the lower unit. The Landlord provided exact detail of the issue the steps they took to address it and to find the source. This included providing notice to the Tenant prior to investigating their bathroom sink. Accordingly for this reason I am satisfied on the balance of probabilities that the Landlord was not made aware of the leaking sink or slant floor as they testified, therefore cannot be found in breach of the Act.
36. Similarly, regarding the issue of the gardens, I cannot overlook that the Tenant never sought permission and offered no evidence or testimony to counter that of the Landlord's regarding the blocking of the laneway and the window to the lower unit. Accordingly, I am satisfied that the Landlord's were merely exercising their rights and obligations to the other tenant.
37. Regarding the alleged illegal entry and missing items, the Tenant could offer no details such as date or time or anything to substantiate that he lost what he claims to have lost. In contrast the Landlord provided the notice of entry, and the details surrounding the steps they took prior to executing that notice. Accordingly, I cannot find the Landlord was in breach, responsible for the lost or that the items were ever in the Tenant's possession, owing the above-mentioned credibility issue.
38. Regarding the issue surrounding the pests. The Landlord didn't dispute there is an issue. However, I am satisfied they took or rather attempted to take the necessary steps as evident by the service report entered. In contrast, as before, the Tenant failed to provide any details as to when the issue commenced or when they notified the Landlord, just that it existed.

39. Furthermore, the Tenant didn't dispute that his failure to move his personal items prevented the treatment nor that the time required didn't necessitate storing of his items. As such I am satisfied again that the Landlords were not in breach of their obligations.
40. Given the Tenant's dispute of arrears are directly related to the above section 82 issues, and my determinations above, I am satisfied that the Tenant is not entitled to an abatement of rent, and therefore owes the Landlord the rent arrears as alleged.

Relief from Eviction

41. Given the rent arrears owing and the fact the Tenant has not paid the rent or attempted to make any payments, the Landlords requested a standard order be issued.
42. In response the Tenant testified that the arrears began to accumulate due to the depletion of his savings as a result of a car accident that he still hadn't received the insurance reimbursement for. It was his position that once he received that claim the arrears would be cleared immediately. In the interim it was his testimony that he could pay a total of \$1600.00 a month towards both the rent and arrears.
43. 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 Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
44. Specifically, given the amount of arrears owing and the amount that the Tenant claims they can pay towards both new rent and the arrears, I am not satisfied that the Landlord would not be prejudiced by the length of time it would take, approximately 31/2 years.

**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:**
  - \$19,088.50 if the payment is made on or before November 30, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$20,215.50 if the payment is made on or before December 3, 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 3, 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 3, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$16,994.41. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. 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 \$37.05 per day for the use of the unit starting November 7, 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 3, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 4, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 3, 2023, then starting December 4, 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 4, 2023.

**November 22, 2023**  
**Date Issued**

\_\_\_\_\_  
Kelly Delaney

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 4, 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before November 30, 2023**

|  |                    |
|--|--------------------|
| Rent Owing To November 30, 2023  | \$18,862.50        |
| Application Filing Fee   | \$201.00           |
| NSF Charges  | \$25.00            |
| <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 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>\$19,088.50</b> |

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 3, 2023**

|  |                    |
|--|--------------------|
| Rent Owing To November 30, 2023  | \$19,989.50        |
| Application Filing Fee   | \$201.00           |
| NSF Charges  | \$25.00            |
| <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 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>\$20,215.50</b> |

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

|  |              |
|--|--------------|
| Rent Owing To Hearing Date   | \$17,973.30  |
| Application Filing Fee   | \$201.00     |
| NSF Charges  | \$25.00      |
| <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                                | - \$1,100.00 |
| <b>Less</b> the amount of the interest on the last month's rent deposit                | - \$104.89   |



|  |                      |
|--|----------------------|
| <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>\$16,994.41</b>   |
| Plus daily compensation owing for each day of occupation starting November 7, 2023 | \$37.05<br>(per day) |