



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

**Citation:** Saleh v Menard, 2023 ONLTB 66366

**Date:** 2023-10-06

**File Number:** LTB-L-021730-22

**In the matter of:** 356 County Rd. 46  
Maidstone ON N0R1K0

**Between:** Izzat Saleh Landlord

**And**

Ron Menard and Vicky Todd Tenants

Izzat Saleh (the 'Landlord') applied for an order to terminate the tenancy and evict Ron Menard and Vicky Todd (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on September 27, 2023.

The Landlord, the Landlord's agent, Ahmad Saleh, the Tenants, and the Tenants' legal representative, Tori-Lee Jenkins ('TJ'), attended the hearing.

**Preliminary Issue:**

1. The Landlord's application was filed April 15, 2022. The application came before the LTB on November 7, 2022 and was adjourned on consent of the parties because the Landlord's agent, Ahmad Saleh, was not available. Interim order LTB-L-021730-22-IN was issued on November 25, 2022.
2. The interim order indicates that the Tenants said they intended to raise issues under section 82 of the *Residential Tenancies Act, 2006* (the 'Act') with respect to alleged maintenance issues and issues regarding a substantial interference with the Tenants' reasonable enjoyment of the rental unit.
3. The interim order required both parties to give each other and file with the LTB their respective disclosure by December 7, 2022. The interim order then states "[t]he Tenants, along with their evidence, shall submit a completed "Issues a Tenants Intends to Raise at a Rent Arrears Hearing" form [s. 82 form], which can be found at the Board website" (emphasis in original).

4. The Tenants filed their s. 82 form on September 20, 2023. The parties agreed that the Tenants vacated the rental unit on July 23, 2023.
5. I raised the preliminary issue of whether the LTB has jurisdiction to hear the section 82 issues raised by the Tenants given that the s. 82 form was filed more than one year after the Tenants vacated the rental unit.
6. Section 82 of the Act provides:

### **Tenant issues**

**82** (1) At a hearing of an application by a landlord under [section 69](#) for an order terminating a tenancy and evicting a tenant based on a notice of termination under [section 59](#), the Board shall permit the tenant to raise any issue that could be the subject of an application made by the tenant under this Act if the tenant,

- (a) complies with the requirements set out in subsection (2); or
- (b) provides an explanation satisfactory to the Board explaining why the tenant could not comply with the requirements set out in subsection (2). [2020, c. 16](#), Sched. 4, s. 16.

### **Requirements to be met by tenant**

(3) The requirements referred to in subsection (1) are the following:

1. The tenant shall give advance notice to the landlord of the tenant's intent to raise the issue at the hearing.
2. The notice shall be given within the time set out in the Rules.
3. The notice shall be given in writing and shall comply with the Rules. [2020, c. 16](#), Sched. 4, s. 16.

### **Orders**

(4) If a tenant raises an issue under subsection (1), the Board may make any order in respect of the issue that it could have made had the tenant made an application under this Act. [2020, c. 16](#), Sched. 4, s. 16.

7. Rule 19.4 of the LTB's *Rules of Procedure* ('*Rules*') requires a tenant who intends to raise issues under section 82 of the Act to, *inter alia*, give the other party and file with the LTB "a written description of each issue the tenant intends to raise" at least 7 days before the hearing. The interim order directed the Tenants to do this by filing the s. 82 form.
8. Rule 19.5 of the *Rules* provides that if a tenant fails to provide the LTB and the other party with a written description of each issue they intend to raise at the hearing as required by rule 19.4, then the Tenant shall not be permitted to raise issues under section 82 of the Act unless the LTB is satisfied that the tenant could not comply with that requirement.

9. The Landlord and the Tenants agreed that the issues that were ultimately included in the s. 82 form were orally identified at the November 7, 2022 hearing.
10. TJ argued that the limitation should run from November 7, 2022, and not from the date the s. 82 form was actually filed. I do not agree with this argument for several reasons.
11. The wording of subsections 82(1) and (2) of the Act provides that a tenant shall be permitted to raise any issue that could be the subject of a tenant application under the Act in response to a rent arrears application made by the Landlord, if the tenant complies with the requirements set out in section 82 of the Act and the *Rules*. Subsection 82(3) then provides that if a tenant raises issues under section 82 of the Act, the LTB can make any order in respect of the issue that it could have made had the tenant made an application under the Act. In my view, this is a direction from the legislature that issues raised under section 82 of the Act ought to be treated like a formal application.
12. In this case, the issues identified by the Tenants in their s. 82 form were maintenance issues. These issues may be the subject of a tenant application under ss. 29(1)1 of the Act. Subsection 29(2) of the Act provides that this type of application cannot be made "... more than one year after the day the alleged conduct giving rise to the application occurred".
13. All of this means that when issues are raised under section 82 of the Act, the limitation period prescribed by subsection 29(2) runs from the date that a s. 82 form is served and filed in accordance with the Act and *Rules*. That is akin to filing an application.
14. The fact that the Tenants said they would raise these issues during the November 7, 2022 hearing is akin to a person saying they are going to file an application. Limitation periods on applications under s. 29 of the Act run from the filing date, not from a date that a tenant says they will file an application. In this case, the Tenants were even explicitly directed to file the s. 82 form by December 7, 2022, which indicates that the issues were not properly before the LTB on November 7, 2022.
15. The limitation period prescribed by subsection 29(2) runs from the date the Tenants formally raised the issues in accordance with the requirements of section 82 of the Act and the *Rules*. In this case, that date is September 20, 2023. The Tenants vacated the rental unit and the tenancy terminated on July 23, 2022, more than one year before this.
16. The LTB therefore does not have jurisdiction to hear the issues the Tenants sought to raise under section 82 of the Act.
17. The application proceeded with respect to the rent arrears.

**Determinations:**

18. 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.
19. The Tenants were in possession of the rental unit on the date the application was filed.

20. The Tenants vacated the rental unit on July 23, 2022. Rent arrears are calculated up to the date the Tenants vacated the unit.
21. The lawful rent is \$1,500.00. It was due on the 5th day of each month.
22. The Tenants have not made any payments since the application was filed.
23. The rent arrears owing to July 23, 2022 are \$7,387.67.
24. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
25. The Landlord collected a rent deposit of \$1,500.00 from the Tenants and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
26. Interest on the rent deposit, in the amount of \$64.23 is owing to the Tenants for the period from July 5, 2021 to July 23, 2022.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated as of July 23, 2022, the date the Tenants moved out of the rental unit.
2. The Tenants shall pay to the Landlord **\$6,009.44**. This amount includes rent arrears owing up to the date the Tenants moved out of the rental unit and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
3. If the Tenants do not pay the Landlord the full amount owing on or before October 17, 2023, the Tenants will start to owe interest. This will be simple interest calculated from October 18, 2023 at 7.00% annually on the balance outstanding.

**October 6, 2023**

**Date Issued**

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Mark Melchers

Member, Landlord and Tenant Board

15 Grosvenor St, 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 Tenants must pay as the tenancy is terminated**

Rent Owing To Move Out Date	\$7,387.67.
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	- \$0.00
<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	- \$1,500.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$64.23
<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>\$6,009.44</b>