



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

**Citation:** 2863879 Ontario Inc. v Ravello, 2023 ONLTB 61592

**Date:** 2023-09-13

**File Number:** LTB-L-038586-23

**In the matter of:** 523 VINE ST  
ST CATHARINES ON L2M3T5

**Between:** 2863879 Ontario Inc. Landlord

**And**

Nicholas Andres Ravello Tenant

2863879 Ontario Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Nicholas Andres Ravello (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on August 31, 2023.

The Landlord's Legal Representative, Judith Callender and the Tenant attended the hearing.

### **Determinations:**

#### Preliminary Issue regarding Duty Counsel

1. The Tenant requested to speak to Tenant Duty Counsel (TDC) prior to the hearing. However, TDC did not attend the hearing. As explained on the Notice of Hearing, TDC is a serviced offered through Legal Aid Ontario and is not affiliated with the LTB. The Notice of Hearing provides contact information for TDC in case a tenant wishes to obtain legal advice prior to the hearing. There is no guarantee that TDC will attend a hearing to meet with a tenant that day. There was no one present on behalf of TDC at the hearing. Although section 10 of the *Statutory Powers Procedure Act* states that a party to an application has the right to legal representative, the right is not absolute.
2. A party to an application is also required to take reasonable steps to be prepared for the hearing on the hearing date: *Q Res IV Operating Gp Inc. v. Berezovs'ka*, [2017] O.J. No. 4863 (Div. Ct.) ('*Berezovs'ka*'). In this present case, the Tenant submits that they were not given an adequate opportunity to speak with TDC immediately before the hearing. I

explained to the Tenant that the LTB's notice of hearing instructs tenants to seek legal advice and representation prior to the hearing date. To assist tenants, the LTB's notice of hearing provides tenants with contact information for Legal Aid Ontario. After I explained the role of TDC at an LTB hearing, I proceeded to hear the merits of the application.

s. 82 Issues

3. At the hearing, the Tenant indicated that he intended to raise his own issues under section 82 of the Residential Tenancies Act, 2006 (the 'Act'). The Tenant testified that he withheld rent because the Landlord failed to address maintenance issues in his unit.
4. Pursuant to section 82 of the Act, a tenant is permitted to raise any issue that could be the subject of a tenant application.
5. Rule 19.4 of the LTB's Rules of Procedure states that a tenant who intends to raise issues under section 82 during a hearing for a landlord's application about rent arrears shall disclose those issues to the other parties and file them with the LTB at least seven days prior to the hearing.
6. In this case, the Tenant did not disclose his issues or file them in advance of the hearing. The Tenant did not provide a reasonable explanation as to why he did not comply with the advance disclosure requirement.
7. As such, I did not hear the Tenant's evidence regarding his section 82 issues. However, it should be noted that this order does not in itself preclude the Tenant from bringing his own application regarding these maintenance issues.

Arrears Owing

8. 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.
9. As of the hearing date, the Tenant was still in possession of the rental unit.
10. The lawful rent is \$2,600.00. It is due on the 9th day of each month.
11. Based on the Monthly rent, the daily rent/compensation is \$85.48. This amount is calculated as follows: \$2,600.00 x 12, divided by 365 days.
12. The Tenant has not made any payments since the application was filed.
13. The rent arrears owing to September 8, 2023 are \$11,800.00.
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 \$2,600.00 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.
16. Interest on the rent deposit, in the amount of \$31.34 is owing to the Tenant for the period from March 9, 2023 to August 31, 2023.
17. The Tenant requested that the Board impose a repayment plan that would allow them to preserve the tenancy. The proposed payment plan included a lumpsum payment of \$6,000.00 by September 5, 2023 and then monthly payments of \$1,000.00 towards the arrears.
18. The Landlord opposed the repayment plan proposed by the Tenant as being too lengthy therefore prejudicial to the Landlord but did support a 3-month repayment plan. The Landlord's representative submitted that since the application was filed, the arrears have increased and the Tenant has failed to communicate with the Landlord.
19. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Residential Tenancies Act, 2006 (the 'Act'), including the personal and financial circumstances of the Tenant. I balanced this with any potential prejudice to the Landlord if a repayment plan was granted and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act. While the Landlord hoped arrears would be paid in full within 3 months, I find increasing the monthly arrears payment would only set up the Tenant for failure. While the repayment plan to be ordered will take 6 months to repay all of the arrears, the Landlord will receive a sizeable lump sum in a timely manner. To reduce any potential prejudice for the Landlord, all payments will be subject to a section 78 clause.
20. The Tenant shall also be ordered to pay the ongoing rent as it becomes due for the duration of the payment plan. Given the date of this order, the deadline for the first payment for September's rent is delayed to September 18, 2023.

**It is ordered that:**

1. The Tenants shall pay to the Landlord \$11,986.00, which represents the arrears of rent (\$11,800.00) for arrears of rent up to September 8, 2023, and costs (\$186.00).
2. The Tenant shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:
  - \$6,000.00 on or before September 22, 2023.
  - \$1,000.00 on or before the 9th day of each month during the five-month period from October 9, 2023 to February 9, 2024.
  - \$986.00 on or before March 9, 2024.

3. The Tenant shall pay to the Landlord the rent for September 2023 on or before September 18, 2023.
4. The Tenant shall also pay to the Landlord new rent on time and in full as it comes due and owing for the period October 9, 2023 to March 9, 2024, or until the arrears are paid in full, whichever date is earliest.
5. If the Tenant fails to make any of the payments in accordance with paragraph 2, 3 or 4 of this order, then:
  - (a) The Landlord may apply under section 78 of the Residential Tenancies Act, 2006 (the 'Act') for an order terminating the tenancy and evicting the Tenant, and for the payment of any new arrears of rent and NSF charges not already ordered under paragraph 1 of this order. The Landlord must make the application within 30 days of a breach of a condition set out in paragraph 2 and/or 3 of this order.
  - (b) The balance owing under paragraph 1 of this order shall become payable on the day following the date of default. The monies owing shall bear interest at the post-judgment interest rate determined under subsection 207(7) of the Act.

**September 13, 2023**  
**Date Issued**

Teresa Hunt  
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.