



Tribunals Ontario
Landlord and Tenant Board

Tribunaux décisionnels Ontario
Commission de la location immobilière

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

Citation: 2328357 Ontario Inc v Everette-Singh, 2023 ONLTB 60925

2023 ONLTB 60925 (CanLII)

In the matter of: 4, 3097 DUNDAS ST W
TORONTO ON M6P1Z9

Between: 2328357 Ontario Inc Landlord

And

Shera Everette-Singh Tenant

2328357 Ontario Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Shera Everette-Singh (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on August 16, 2023.

The Landlord's Legal Representative, B. Rubin, the Landlord's Agent, L. Heyland, 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 \$1,328.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$43.66. This amount is calculated as follows: \$1,328.00 x 12, divided by 365 days.
5. The Tenant has paid \$1,500.00 to the Landlord since the application was filed.
6. The Tenant did not dispute that the rent arrears owing to August 31, 2023 are \$9,164.00.
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 \$1,140.00 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.
9. Interest on the rent deposit, in the amount of \$202.89 is owing to the Tenant for the period from September 1, 2012 to August 16, 2023.

Section 82 issues

10. The Tenant alleges that the Landlord is in breach of its obligations under the *Residential Tenancies Act, 2006* (Act) due to ants in the rental unit and sought to raise this issue at this hearing.

11. Section 82 of the Act states:

(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).

(2) 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.

12. Rule 19.4 of the Board's Rules of Procedure states:

Unless the LTB has directed or ordered otherwise, a tenant who intends to raise issues under sections 82(1) or 87(2) of the RTA during a hearing for a landlord's application about rent arrears shall provide the other parties and the LTB with the following at least 7 days before the scheduled CMH or hearing:

1. a written description of each issue the tenant intends to raise; and

2. a copy of all documents, pictures and other evidence that the tenant intends to rely upon at the hearing.

13. The Tenant has not provided written notice of this issue and supporting evidence at least seven days in advance of the hearing date as required by subsection 82(2) of the Act and Board Rule of Procedure 19.4. The Tenant did not provide a reasonable explanation as to why she could not have complied with these requirements. Therefore, the Tenant's section 82 claims cannot be considered by the Board.

14. The Tenant was, however permitted to raise this issue as circumstances to be considered by the Board pursuant to s.83(3)(a) of the Act. That section states that the Board must deny an eviction application where the Landlord is in serious breach of their obligations under the Act. The Tenant is also entitled to raise this issue and seek a remedy by filing her own application at the Board.

Relief From Eviction

15. 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 not be unfair to postpone the eviction until October 31, 2023 pursuant to subsection 83(1)(b) of the Act.
16. The Tenant has resided in the rental unit for 11 years. She and her partner, who resides in the unit as well, currently both receive OW and are trying to find employment. Her partner is required to pay child support out of the amount received. The Tenant plans to investigate the Housing Stabilization Funding through OW. She also has requested some financial assistance from a family member. She requested a repayment plan wherein the monthly rent is paid when due and an additional \$1,000.00 will be paid on the 15th of each month. In the alternative, she has requested until October 31, 2023 or November 30, 2023 to vacate the rental unit.
17. The Landlord's Agent stated that the Tenant has continually made promises to pay the rent arrears, including her last email that stated she would have \$5,000.00 by July 31, 2023. The Landlord's Agent stated that she does not believe the Tenant will keep to a repayment plan given her history of not following through on her promises to pay. The Landlord's Agent stated that the Tenant has not paid anything since April 2023. The Landlord's Agent also stated that not having this rental income from this unit has affected her family, as she has to cover the mortgage from her personal income.
18. The rent arrears currently outstanding are \$9,164.00, which is a significant increase since the application was filed seeking rent arrears of \$4,024.00. The Tenant has not made any payments to the Landlord since April 2023. Therefore, in these circumstances I find that ordering a repayment plan is not fair to the Landlord. Given the length of this tenancy, and that the Landlord is holding a last month's rent deposit, it is fair to only delay the eviction until October 31, 2023

Serious Breach

19. The Tenant stated that there is an issue with insects in her unit, namely ants, silverfish, and centipedes. She believes that the silverfish and centipedes have come because of the ants. She stated that the Landlord's pest control is not effective as there are still ants and now there are these other insects in her unit.
20. The Landlord stated that she hired an exterminator who has been in business for over 40 years. Their invoices detail what if anything is stated by the tenants at the time of treatment. The Landlord's Agent stated that the invoices for months have indicated that the Tenant has seen very little action and there is no mention of other insects present.

However, the Landlord's Agent stated that the last invoice, July 26, 2023, indicated that the Tenant has seen ants in the kitchen.

21. The Landlord's Agent also stated that the Tenant has numerous plants in her kitchen and that the exterminator advised that it will be difficult to treat the ants because of the number of plants because the having water around attracts the ants. The Tenant disputed that her plants are the reason for the ants as she has plants in other rooms in her unit and only sees the ants in the kitchen and no where near her plants.
22. There was insufficient evidence before me that the Landlord is in serious breach of its obligations under the Act. There was no dispute that the Landlord was aware of an ant issue in the Tenant's unit which is currently being addressed. The Landlord has hired an exterminator who attends the residential complex regularly or when requested to address any ants reported to be in the Tenant's unit.

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:**
 - \$10,678.00 if the payment is made on or before September 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$12,006.00 if the payment is made on or before October 31, 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 October 31, 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 October 31, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$7,377.67. 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 \$43.66 per day for the use of the unit starting August 17, 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 October 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 1, 2023 at 6.00% annually on the balance outstanding.

8. If the unit is not vacated on or before October 31, 2023, then starting November 1, 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 November 1, 2023.

September 11, 2023

Date Issued

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 May 1, 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

2023 ONL TB 60925 (CanLI)

Rent Owing To Hearing Date	\$10,034.56
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,500.00

Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,140.00
Less the amount of the interest on the last month's rent deposit	- \$202.89
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00

A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before September 30, 2023

Rent Owing To September 30, 2023	\$11,992.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,500.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$10,678.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before October 31, 2023

Rent Owing To October 31, 2023	\$13,320.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,500.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$12,006.00

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

Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$7,377.67

Plus daily compensation owing for each day of occupation starting August 17, 2023	\$43.66 (per day)
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