



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

**Citation:** FIRST ROCK PROPERTIES LTD v Kosjer, 2023 ONLTB 60224

**Date:** 2023-09-05

**File Number:** LTB-L-004693-22

**In the matter of:** 202, 245 JAMES ST N  
HAMILTON ON L8R2L2

**Between:** FIRST ROCK PROPERTIES LTD Landlord

**And**

Darlin Kosjer and Celina Grant Tenant

FIRST ROCK PROPERTIES LTD (the 'Landlord') applied for an order to terminate the tenancy and evict Darlin Kosjer and Celina Grant (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 February 14, 2023.

The Landlord 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 \$1,550.76. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$50.98. This amount is calculated as follows: \$1,550.76 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 February 28, 2023 are \$22,751.80.
7. The Landlord is entitled to \$100.00 to reimburse the Landlord for administration charges and \$20.00 for bank fees the Landlord incurred as a result of 2 cheque given by or on behalf of the Tenant which was returned NSF.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$1,495.00 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 \$47.64 is owing to the Tenant for the period from May 1, 2020 to February 14, 2023.

#### S.82 Maintenance Issues

11. The Tenants raised the following issues pursuant to section 82 of the Residential Tenancies Act, 2006 (the 'Act'):
  - ✦ Broken Door
  - ✦ Furnace Air Filter
12. The Tenants claim that they informed the Landlord about replacing the **furnace air filter** in the unit in May 2020 when they moved into their unit. They claim that it took the Landlord almost two years to replace the air filters, and they experienced cold-like symptoms, wheezing, and difficulty breathing, which they claim was caused by the dirty air filter.
13. The Tenants claim that they informed the Landlord about replacing the door locks in the unit in May 2020 when they moved into their unit. The Tenant asserts that their personal belongings were stolen from their unit's entrance due to a defective security system that permitted unauthorized entry.

#### Landlord's Evidence

14. The Landlord testified that on June 11, 2021, when the Tenants informed her about the **furnace air filter**, she contacted the building's HVAC service personnel and requested a new air filter for the residential units. The Landlord testified that the HVAC service personnel advised her that receiving the air filters would take a while due to backorder created by COVID-19. On November 25, 2021, the Landlord delivered the air filter to the Tenants, which the HVAC serviceman resized because they did not get the actual size for the air filter. On December 11, 2021, the Landlord claimed that she delivered the actual size filters to the Tenants, and the Tenants replaced the air filters accordingly.
15. The Landlord testified that the front and back **doors** to the unit are always locked, and the only way somebody can get in is when the doors are not shut properly. The Landlord

stated that she promptly acted upon receiving a complaint from the Tenants about a breakin and the ease with which someone could enter the unit using a credit or library card. Without delay, she promptly summoned a police officer and a locksmith to the unit to investigate the matter, and the tenants in unit # 1 confirmed that the issue had been fully resolved.

### Analysis

16. Section 20(1) of the Act states: A landlord is responsible for providing and maintaining a residential complex, including the rental units, in a good state of repair and fit for habitation and complies with health, safety, housing and maintenance standards.
17. 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 determine 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. In *Onyskiw*, the Court of Appeal also specifically considered the Landlord's mitigating efforts as part of its contextual analysis.
18. Additionally, in accordance with section 16 of the Act, when a landlord becomes liable to pay any amount as a result of a breach of subsection 20(1), the tenant has a duty to take reasonable steps to minimize the loss.
19. As the Tenants raised the section 82 issues at the hearing, the onus lies with them to establish that the Landlord breached his maintenance obligations. In order to prove the Landlord breached his maintenance obligations, the Tenants must provide enough details as to when the breach occurred, how many times and when they notified the Landlord of the problems.
20. The evidence shows that the Landlord took reasonable steps to replace the furnace air filter when the Tenant informed her about it. Although it may not have been done in a timely manner, the evidence here shows that the delay in replacing the furnace air filter service was a circumstance beyond Landlord's control. The Landlord should not be held responsible for the delay in replacing the air filter since the delay is due to COVID-19 business shutdowns. The evidence shows that the Landlord investigated and addressed the door lock system and break-ins with the police and locksmith.
21. Also, I have taken into account that the Tenant failed to take any steps to minimize her losses related to this issue. For example, the Tenant did not provide a reasonable explanation about why she did not purchase a humidifier or hire the services of a thirdparty professional to address the air quality in the unit.
22. In review of all of the evidence before me, I am satisfied on a balance of probabilities that the Landlord met his obligations under subsection 20(1) of the Act with respect to the alleged broken door lock and the furnace air filter. In making this finding, I considered the Tenants' evidence vague and lacked important details such as when the items broke, when

they reported to the Landlord and when the repairs were completed. Based on the Tenants' evidence, I couldn't establish that the items required repair or replacement on an ongoing basis and that the Landlord did not respond in a timely manner to complete the repairs.

23. 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.

**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:**
  - \$33,913.12 if the payment is made on or before September 16, 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 September 16, 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 September 16, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$20,678.12. 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 \$50.98 per day for the use of the unit starting February 15, 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 September 16, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 17, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before September 16, 2023, then starting September 17, 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 September 17, 2023.

**September 5, 2023**

**Date Issued**

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Percy Laryea

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 March 17, 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 September 16, 2023**

Rent Owing To September 30, 2023	\$33,607.12
Application Filing Fee	\$186.00
NSF Charges	\$120.00
<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>\$33,913.12</b>

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

Rent Owing To Hearing Date	\$21,914.76
Application Filing Fee	\$186.00
NSF Charges	\$120.00
<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	- \$1,495.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$47.64

<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>\$20,678.12</b>
Plus daily compensation owing for each day of occupation starting February 15, 2023	\$50.98 (per day)