



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Oza v Myrie, 2023 ONLTB 59233

**Date:** 2023-08-29

**File Number:** LTB-L-062164-22

**In the matter of:** Basement, 354 GRANGE RD  
Guelph ON N1E0K1

**Between:** Yogeshkumar Oza Landlords  
Mansi Oza

**And**

Marsha Myrie Tenants  
Vere Myrie

Yogeshkumar and mansi Oza (the 'Landlord') applied for an order to terminate the tenancy and evict Marsha Myrie, Vere Myrie and Ochi Layne (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on April 27, 2023 and August 18, 2023.

The Landlord, Yogeshkumar Oza, the Landlords' Legal Representative, T. O'Brien, and the Tenant, Marsha Myrie, attended the hearing.

Ochi Layne is removed as a party to the application.

**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 \$1,793.75. It is due on the first day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$58.97. This amount is calculated as follows: \$1,793.75 x 12, divided by 365 days.
5. The Tenant has paid \$14,168.30 to the Landlord since the application was filed.
6. The rent arrears owing to August 31, 2023 are \$6,962.95.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

## Issues Under Section 82 of the Act

### Mold

8. The Tenant, who moved into the unit in June 2022, testified that she observed wet water marks, and mold in the unit at the end of July 2022. The Landlords were informed on August 30, 2022 and they accused her of causing the problem. The Landlords denied the Tenant's request for an air quality specialist so she hired one herself and their report dated October 4, 2022 indicated that the unit had high humidity resulting in dampness and mold growth on the Tenant's belongings. Afterwards, the Landlord hired his own specialist.
9. The report from the specialist hired by the Tenant, BE, also recommended proper tests to '*identify if the visible microbial growth is mould and moreover what type of mould ....*'
10. The Landlord testified that at the start of the tenancy on June 11, 2022, he asked the Tenant to close all the windows so he could turn on the air conditioner but she refused despite his explanation that the air conditioner would control humidity and keep mold at bay.
11. The Landlords, following the Tenant's complaint about mold, sent an email to the Tenant on August 30, 2022, requesting an inspection of the unit while also stating that the unit had no mold previously. The Tenant denied requests for an inspection, instead requesting that the Landlord sends specialists to conduct the inspection and repairs. On September 6, 2022, the Landlords offered an early termination of the tenancy with a promise to pay for the damage the Tenant claimed was caused to her items but the discussions subsequently failed.
12. On September 11, 2022, the Landlords were able to inspect the unit and concluded there was no evidence of mold anywhere in the unit. On November 7, 2022, they received a report from the Tenants, prepared by BE on October 4, 2022. On reading the report, they tried to contact BE but received no response. The Landlord hired their own specialists, ACE, who inspected the unit on November 16, 2022 and provided a report dated November 25, 2022.
13. The report shows that mold was identified in the unit on baseboards, and underneath the kitchen sink but were deemed minor in nature and not a health risk. ACE recommended cleaning of the kitchen cabinet and bedroom baseboard with '*regular mould cleaning product*' and replacement of the washroom and entrance door due to the impact of water over the years. The Landlord testified that he carried out the recommendations and provided before and after pictures to support his assertion.

### Mail Delivery

14. The Tenant had no access to the mailbox which was shared with the Landlords. As a result, the Landlords left her mails on the stairs leading to her unit and they sometimes became wet from rain or snow. On August 25, 2022, the Tenant communicated with the Landlord about this issue, leading the Landlord to contact the post office about rerouting the Tenant's mails on February 22, 2023. The Tenant provided a copy of the email correspondence from August 25, 2022 as well as pictures of three wet envelopes taken on December 20 and 31, 2022.

15. The Landlord stated that he delivered the mail to the Tenant twice a week and when the Tenant complained about water damage, he sent an email dated December 1, 2022 asking the Tenant to either reroute her mails or provide a plastic container in which he could place her mails. The Landlord subsequently obtained a separate mailbox for the Tenant who received a key on April 28, 2023.

#### N4 Notice

16. The Landlords caused some embarrassment to the Tenants when they posted a picture of a Notice to End your Tenancy Early For Non-payment of Rent (N4) on the door of the unit which anyone walking by the unit could see. The Tenants felt shunned by a new friend in the neighbourhood afterwards.
17. The Landlord admitted placing an N4 notice on the door of the unit on September 11, 2022 and as they left, observed an occupant of the unit take the notice from the door. A subsequent N4 notice in October 2022 was placed under the door of the unit.

#### Racial Profiling

18. The Tenant believed the behaviour of the Landlords towards her was motivated by race because he once commented that he had mortgage payments to make and she would not know what it felt like. On October 31, 2022, the Tenant parked her car on the driveway based on an agreement that she could do so from November 1, 2022 to March 31, 2023 but the female Landlord got upset and banged on the door of the unit asking the Tenant to move it or she would have it towed, and commented that the unit had no mold before the Tenant moved in.
19. The Tenant provided an email from the Landlords dated September 13, 2022 where they implied that the Tenants did not keep the unit in an ordinary state of cleanliness.
20. The Tenant further stated that she felt she was under surveillance because the Landlord inspected the unit every three months and did not resolve any issues. On October 20, 2022, the Tenant travelled for work and received an email from the Landlord that she had abandoned the unit, causing her anxiety. The email was also posted on the door of the unit.
21. The Landlords also demanded proof of insurance in November 2022 and wanted proof of snow tires and on December 5, 2022, accused the Tenant of causing oil stains on the roads. The female Landlord on April 4, 2023, also harassed the Tenant's senior colleague who dropped her off at home by yelling that they could not use the driveway as it was private property.
22. The Landlord testified that on October 20, 2022, he sent the email to the Tenant about abandonment of the unit because the Tenant was absent from the unit. The Landlords denied treating the Tenant differently because of her race.
23. There are security cameras in the residential complex for security purposes. On October 31, 2022, the Tenant's car was parked directly behind his wife's car and she had to ask the Tenant to remove the car. He once observed the spot the Tenant parked on the street had oil stains so he asked about it.

## Analysis

24. Section 20 (1) of the Residential Tenancies Act, 2006 (“Act”), provides that 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.
25. Based on all the foregoing, the complaint about mold was made on August 30, 2022 and the Landlord immediately responded by email and sought to conduct an inspection. The Tenant requested an inspection by a specialist, and delayed the Landlord’s inspection until September 11, 2022, when the Landlord concluded there was no mold in the unit. However, the specialist hired by the Tenants, BE, concluded that there was excessive moisture in the unit leading to ‘microbial growth’.
26. The Landlord subsequently hired his own specialist, ACE who determined there was a minor case of mold although insufficient to cause any health issues. Had the Landlords hired ACE after an inspection of the unit on September 11, 2022, their recommendation would have been followed earlier and the Tenant would not have hired BE. For this reason, the Landlords must refund to the Tenants the cost of \$75.00 they incurred from hiring BE. A further 5% rent abatement for ignoring the problem from September 11, 2022 to November 16, 2022 after BE inspected and diagnosed the problems missed by the Landlords will be awarded to the Tenants in the amount of \$187.20 (65 days x \$2.88).
27. On the issue of damage to the Tenants’ belongings, it is undisputed that the Tenants observed the damage to their property in July 2022 but no mention was made of it to the Landlords until August 30, 2022. This means the Landlords were unaware of the problem and could not have prevented the alleged damage. Besides, during her testimony the Tenant admitted that a lot of her belongings were not unpacked but were instead stacked in a corner of the unit. This confirmed the Landlords’ complaint in the email from September 13, 2022, that it appeared the Tenants used the unit for storage. Based on the disclosed evidence, I cannot conclude that the Landlords were previously aware that the unit was prone to mold growth and could have taken steps to prevent damage to the Tenants’ belongings.
28. Section 22 of the *Residential Tenancies Act, 2006* (*the Act*) provides that a landlord shall not at any time during a tenant’s occupancy of a rental unit and before the day on which an order evicting the tenant is executed substantially interfere with the reasonable enjoyment of the rental unit or the residential complex in which it is located for all usual purposes by a tenant or members of his or her household.
29. The Landlords did not provide a mailbox key to the Tenants and hence were in control of delivery of the mails to the Tenants when it arrived. The Tenants presented evidence showing three wet envelopes, one of which was from Canada Revenue Agency. The Tenant made the complaint in an email on August 25, 2022 and by February 22, 2023, the Landlords contacted the post office and subsequently arranged for the Tenant’s own mailbox. Given the substantial number of mails that must have been delivered from the Landlords to the Tenants, the damage to three envelopes in December 2022, is not substantial enough to warrant rent abatement.

30. The Landlords improperly served the Tenants with the N4 notice of termination by posting it on the door of the unit in September 2022. As this incident was not repeated, I am not satisfied that the Landlords substantially interfered with the Tenant's enjoyment of the unit.
31. On the issue of parking, the Landlords engaged in harassing conduct when the female Landlord on October 31, 2022 yelled at the Tenant to remove her car from the driveway and again on April 4, 2023, yelled at the Tenant's colleague who had dropped her off at home. I find the conduct of the Landlords highly inappropriate and an interference with the Tenant's enjoyment of the unit. The Tenant will be awarded a rent abatement of 5% of the monthly rent of \$1,750.00 or \$87.50 for both incidents.
32. On October 20, 2022, while the Tenant was away for work, the Landlords sent an email Notice of Entry stating that they wanted to '*judge if anyone still living in the unit*' and posted a copy on the door of the unit. Under the Act, the Landlords are within their rights to enter the unit if they serve a Notice of Entry 24 hours prior.
33. Similarly, regarding the Landlords' email on December 5, 2022 on the oil stain on the street, the tone of the email was polite and the Landlords mentioned they were worried about "*slips and containments*".
34. The Landlords also asked the Tenants to provide car insurance information '*just for the peace of mind*'. The Tenants are not under any obligation to provide this to the Landlords and all they needed to do was deny the request. No evidence was provided to suggest the Landlords requested the insurance information again.
35. Based on the foregoing, the Tenants are entitled to an abatement of rent of \$349.70. This amount will be deducted from the amount owing to the Landlord.
36. The Landlord collected a rent deposit of \$1,750.00 from the Tenants 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.
37. Interest on the rent deposit, in the amount of \$53.22 is owing to the Tenants for the period from June 1, 2022 to August 18, 2023.

### **Relief from Eviction**

38. The Tenant, having secured alternative accommodation, requested a termination date of August 31, 2023.
39. I have considered all 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 Landlords and the Tenants is terminated. The Tenants must move out of the rental unit on or before August 31, 2023.

2. The Tenants shall pay to the Landlords \$4,263.74. 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 and the rent abatement awarded to the Tenants are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
3. The Tenants shall also pay the Landlord compensation of \$58.97 per day for the use of the unit starting August 19, 2023 until the date the Tenants move out of the unit.
4. If the Tenants do not pay the Landlords the full amount owing on or before March 1, 2024, the Tenants will start to owe interest. This will be simple interest calculated from March 2, 2024 at 6.00% annually on the balance outstanding.
5. If the unit is not vacated on or before August 31, 2023, then starting September 1, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after September 1, 2023.

**August 29, 2023**  
**Date Issued**

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Jitewa Edu  
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 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**

**A. Amount the Tenant must pay as the tenancy is terminated**

Rent Owing To Hearing Date	\$20,398.96
Application Filing Fee	\$186.00
<b>Less</b> the amount the Tenants paid to the Landlords since the application was filed	- \$14,168.30
<b>Less</b> the amount of the last month's rent deposit	- \$1,750.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$53.22
<b>Less</b> the amount the Landlords owes the Tenants for an abatement	- \$349.70
<b>Total amount owing to the Landlords</b>	<b>\$4,263.74</b>
Plus daily compensation owing for each day of occupation starting August 19, 2023	\$58.97 (per day)