



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Lumei v Kiraly, 2023 ONLTB 54375

**Date:** 2023-08-09

**File Number:** LTB-L-071717-22

**In the matter of:** 79 SAMSON CRES  
SCARBOROUGH ON M1G1N2

**Between:** Lumei and Ling Chen Landlords

**And**

Brigitta Kiraly Tenants  
Oliver Kokeny  
Vivien Olah

Lumei and Ling Chen (the 'Landlords') applied for an order to terminate the tenancy and evict Brigitta Kiraly, Oliver Kokeny and Vivien Olah (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on June 5, 2023.

The Landlords, the Landlord representative, Mary Want and the Tenants attended the hearing.

### Preliminary Issue:

#### *The Board's Monetary Limit*

1. The amount of arrears claimed by the Landlord exceeds the Board's \$35,000.00 monetary jurisdiction as set out in s. 207 of the *Residential Tenancies Act, 2006*.
2. The Landlord acknowledged the Board's monetary limit and submitted that the Landlord wished to proceed with the application anyway.
3. The Landlord was made aware of the fact that by proceeding with this application, all rights the Landlord may have in excess of the Board's monetary jurisdiction are extinguished once the Board issues its order.

### Determinations:

1. The Landlords served the Tenants with a valid Notice to End Tenancy Early for Non-payment 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.
2. As of the hearing date, the Tenants were still in possession of the rental unit.

3. The lawful rent is \$3,500.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$115.07. This amount is calculated as follows: \$3,500.00 x 12, divided by 365 days.
5. The Tenants has not made any payments since the application was filed.
6. The rent arrears owing to June 30, 2023 are \$34,067.00.
7. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlords collected a rent deposit of \$3,500.00 from the Tenants and this deposit is still being held by the Landlords. 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 \$82.23 is owing to the Tenants for the period from June 28, 2022 to June 5, 2023.

#### Section 82 Issues

10. At the hearing, the Tenants wanted to raise section 82 issues to be considered as to why they had not paid the rent. The Tenants stated there have been numerous maintenance issues with the rental unit however they did not file these issues to be heard today.
11. It was explained to the Tenants that paying rent is an obligation and rent cannot be withheld due to maintenance issues in the rental unit.
12. When asked whether he had served a list of section 82 issues on the Landlords and filed it with the Board, the Tenants stated that they had not as they was not aware of the requirement.
13. Pursuant to section 82 of the *Residential Tenancies Act, 2006* (the 'Act'), a Tenant is permitted to raise any issue that could be the subject of an application if the Tenant complies with the disclosure requirements. The Tenant has not done so and therefore, I did not hear the Tenant's evidence regarding the maintenance issues in his unit. However, it should be noted that this does not preclude the tenant from bringing their own application pursuant to section 20 of the Act.

#### Mandatory Relief from Eviction

14. Pursuant to section 83 (3), without restricting the generality of subsection (1), the board shall refuse to grant the application where satisfied that the landlord is in serious breach of the landlord's responsibilities under this Act or any material covenant of the tenancy agreement.
15. The Tenant raised the following issues: the basement bathtub does not work since the start of the tenancy; the toilet in the washroom on the main floor does not flush since the beginning of the tenancy; electrical outlets are not working since the beginning of the tenancy; the air

conditioning did not work for 5 weeks however it has been repaired; there are issues with the lock on the main entrance to which the Landlord has attempted to repair.

16. Pursuant to the Act the Landlord must be in serious breach of their obligations. I interpret this section to mean the Landlord must currently be in serious breach establishes that only current breaches at the time of the hearing (not past or potential future breaches) will invoke subsection 83(3)(a) of the Act.
17. I have considered the issues raised by the Tenant pursuant to section 83(3)(a) of the act and find that because the Tenants issues are not serious and ongoing I cannot consider mandatory relief from eviction. I do not find that there are sufficient grounds to delay or deny termination of the tenancy.

#### Relief from Eviction

18. 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 Landlords attempted to negotiate a repayment agreement with the Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
19. The Landlord sought an eviction order as the arrears were described as substantial with a no payments made by the Tenant since the application was filed.
20. The Tenant testified that he stopped paying the rent due to the maintenance issues with the rental unit. It was explained to the Tenant that paying rent is an obligation and rent cannot be withheld due to maintenance issues in the rental unit.
21. There are substantial rent arrears owing with no realistic plan for how to pay it back. Therefore, I find there is no realistic way to impose a payment plan since there is no evidence supporting how any repayment plan could be satisfied. The Tenants testified that they would need until August 15, 2023 to find a new place to live if eviction were granted.

#### **It is ordered that:**

1. The tenancy between the Landlords and the Tenants is terminated unless the Tenants voids this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlords:**
  - \$41,253.00 if the payment is made on or before August 20, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants has paid the full amount owing as ordered plus any additional rent that became due after August 20, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.

4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before August 20, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$27,746.12. 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 Landlords owe on the rent deposit are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlords compensation of \$115.07 per day for the use of the unit starting June 6, 2023 until the date the Tenants moves out of the unit.
7. If the Tenants do not pay the Landlords the full amount owing on or before August 20, 2023, the Tenants will start to owe interest. This will be simple interest calculated from August 21, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before August 20, 2023, then starting August 21, 2023, the Landlords 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 Landlords on or after August 21, 2023.

**August 9, 2023**  
**Date Issued**

\_\_\_\_\_  
Camille Clyne  
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 February 21, 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before August 20, 2023**

Rent Owing To August 31, 2023	\$41,067.00
Application Filing Fee	\$186.00
<b>Less</b> the amount the Tenants paid to the Landlords since the application was filed	- \$0.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$41,253.00</b>

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

Rent Owing To Hearing Date	\$31,142.35
Application Filing Fee	\$186.00
<b>Less</b> the amount the Tenants paid to the Landlords since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$3,500.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$82.23
<b>Total amount owing to the Landlords</b>	<b>\$27,746.12</b>
Plus daily compensation owing for each day of occupation starting June 6, 2023	\$115.07 (per day)