



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

**Citation:** Minto Apartment Limited Partnership v Farah, 2023 ONLTB 53859

**Date:** 2023-08-04

**File Number:** LTB-L-055810-22

**In the matter of:** 1108, 21 RICHGROVE DR TORONTO  
ON M9R2L2

**Between:** Minto Apartment Limited Partnership Landlord

**And**

Nora Farah Tenant

Minto Apartment Limited Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Nora Farah (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on July 11, 2023.

The Landlord's Representative, Martin Zarnett and the Tenant attended the hearing. Witnesses for the Landlord, Jia Watters also attended the hearing.

Interim Order LTB-L-055810-22-IN was issued on June 2, 2023 given the hearing was adjourned on May 24, 2023 and ordered the Tenant to pay rent the Landlord rent until the L1 and section 82 issues completes.

### **Preliminary Issues:**

1. The Tenant stated she did not receive the N4 Notice of Termination nor the Notice of Rent Increase (NORI) for July 1, 2022 and therefore the N4 Notice is void because the rent charge is unlawful.
2. The N4 Notice and NORI requires a landlord to demonstrate that it effected service in accordance with s. 191 of the RTA and that it was "sufficiently given" to the Tenant. The finding that the NORI and N4 Notice was 'sufficiently given' by one of the methods specified in the RTA is the issue to be considered, as opposed to whether the party actually received notice. (*see Zelsman v. TCHC, 2017 ONSC 5289*)

3. Julia Watters, testified she was the person who mailed the N4 Notice and the NORI and was also the person who signed the Certificate of Services on the perspective dates which verifies the method of service the documents were given to the Tenant. The mailing address on the Certificates of Service is the same address of the unit and there was no evidence led that the N4 Notice or the NORI were returned by Canada Post as undelivered. Section 191 of the *Residential Tenancies Act*, 2006 identifies various methods in which a party may give another person a document and the Landlord has complied with the prescribed method of servicing having mailed the N4 Notice and the NORI to the rental unit. Section 191(3) of the Act, also states, a notice or document given by mail shall be deemed to have been given on the fifth day after mailing.
4. With respect to the issues raised by the Tenant under section 82, my findings are based on evidence presented by the Tenant and cross examination only since the Landlord chose not to present evidence for the sake of avoiding an adjournment.

**Determinations:**

L1 Application:

5. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Nonpayment 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.
6. As of the hearing date, the Tenant was still in possession of the rental unit.
7. The lawful rent is \$1,996.80. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$65.65. This amount is calculated as follows: \$1,996.80 x 12, divided by 365 days.
9. The Tenant has paid \$3,948.00 to the Landlord since the application was filed.
10. The rent arrears owing to July 31, 2023 are \$27,625.75.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$1,940.38 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.
13. Interest on the rent deposit, in the amount of \$25.15 is owing to the Tenant for the period from January 1, 2022 to July 11, 2023.

Tenants' Section 82 issues:

14. The Tenant testified there was a substance that leaked from the ceiling/appliance in the parking garage which damaged the Tenant's vehicle which was reported to the Landlord on December 23, 2021 verbally followed up by a complaint in writing on January 14, 2022. The Landlord investigated and the Tenant was given another parking spot on January 20, 2022. The issue giving rise to the Tenant's section 82 issues is out of time because section 29(2) of the *Residential Tenancies Act, 2006 (the 'Act')* states, "no application may be made more than one year after the day the alleged conduct giving rise to the application occurred". The Tenant did not file an application but raised her issues under section 82 of the Act on May 16, 2023. Given the issue was resolved in January 20, 2022 which was before May 16, 2022, the Board has no jurisdiction to consider remedy.
15. The Tenant showed photographs of a brown mark on the kitchen countertop which she states was repairs the Landlord failed to make. The Tenant reported the problem to the Landlord before she moved in December 2020 and followed up with the Landlord by email on January 31, 2020. The Tenant stated the countertop has not been repaired. The photographs do not show any defect with respect to the countertop except for one small brown spot. I accept the Tenant's unchallenged testimony that it was bubbled but the problem seems to be minor because it can't be seen on the photographs. The Tenant failed to establish that the issue with the countertop was more than a cosmetic problem. The countertop does not interfere with the Tenant's use for all intended purposes.
16. The Tenant stated the floors tiles were loose and required repairs as reported to the Landlord on December 8, 2019 and again on January 31, 2020. The Landlord repaired the flooring on May 26, 2023 which supports a finding that the floors required work. However, it's important to note that although some of the parquet tiles were loose, the Tenant's photographs showed the tiles were in place and intact. The Tenant was told the tiles could be fixed but would be a different color but did not testify about the outcome of her meeting with the Landlord's agent nor did she give a date of that inspection. The areas where the tile were loose was under carpet(s) or under furniture; they are minor in nature; and did not interfere with Tenant's or occupants' activities of daily living in the unit.
17. The Tenant sent an email to the Landlord of on January 31, 2020 reporting a problem with the closet door. The Tenant raised her issue under section 82 of the Act, and the Landlord repaired the closet on June 12, 2023.
18. The Tenant sent an email to the Landlord on January 31, 2020 about a problem related to the balcony door window which the Landlord ordered on June 4, 2023 and repaired on July 9, 2023.

19. With respect to paragraphs, 13, 14 and 15 hereof, the Tenant appears to have declined anyone entering her unit during the height of Covid-19 pandemic. When she raised the issue again under section 82, the Landlord responded by doing the repairs to the floors, closet door and balcony door window within a reasonable time period.
20. Aside from the assertion that there was no cold water in the unit the Tenant did not provide any corroborating evidence led persuaded me that a maintenance issue exists.

**Section 83:**

21. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
22. The Tenant proposed a 50-month payment plan which not reasonable. The Tenant has \$9000.00 which she can pay to the landlord and expects to obtain addition money from rent bank with the remaining balance being paid back in 50 months. The Tenant has withheld rent and can't pay the Landlord within a reasonable time frame. Given her payment history I am not satisfied this tenancy can be preserved. The Tenant was issued an oral decision extending the termination date to July 31, 2023 but given the date of issuance of this order additional time is given.

**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:**
  - \$29,808.55 if the payment is made on or before August 15, 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 August 15, 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 August 15, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$24,571.20. 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 \$65.65 per day for the use of the unit starting July 12, 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 August 15, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 16, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before August 15, 2023, then starting August 16, 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 August 16, 2023.

**August 4, 2023**

**Date Issued**

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Sandra Macchione

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 16, 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 August 15, 2023**

Rent Owing To August 31, 2023	\$33,570.55
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$3,948.00
<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>\$29,808.55</b>

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

Rent Owing To Hearing Date	\$30,299.10
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$3,948.00
<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	- \$1,940.38
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$25.52
<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>\$24,571.20</b>
Plus daily compensation owing for each day of occupation starting July 12, 2023	\$65.65 (per day)