



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

Citation: Ou v Fatehibanafshevaragh, 2023 ONLTB 50444

Date: 2023-07-25

File Number: LTB-L-015743-23

In the matter of: 305, 376 HIGHWAY 7 E
RICHMOND HILL ON L4B0C7

Between: Shunxian Ou Landlord

And

Mostafa Fatehibanafshevaragh Tenant

Shunxian Ou (the 'Landlord') applied for an order to terminate the tenancy and evict Mostafa Fatehibanafshevaragh (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 June 20, 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. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Tenant vacated the rental unit on May 20, 2023. Rent arrears are calculated up to the date the Tenant vacated the unit.
4. The lawful rent is \$2,050.00. It was due on the 1st day of each month.
5. The Tenant has not made any payments since the application was filed.

6. The rent arrears owing to May 20, 2023 are \$9,547.95. The Tenant does not dispute this amount. However, the Tenant raised section 82 to seek an abatement of rent.
7. The Landlord is entitled to \$40.00 to reimburse the Landlord for administration charges and \$14.00 for bank fees the Landlord incurred as a result of 2 cheques given by or on behalf of the Tenant which were 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 \$2,050.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.

Section 82

10. During the hearing, the Tenant asked the Board to consider an abatement of rent.
11. Section 82 of the *Residential Tenancies Act, 2006* (the 'Act') allows a tenant to raise any issue that could be the subject of an application made by a tenant under the Act if the tenant gives the landlord advance notice of his intention to raise the issue at the hearing (see Section 82(2)).
12. Rule 19.4 of the *Rules of Procedure* (the 'Rules') states that:

19.4 Unless the LTB has directed or ordered otherwise, a tenant who intends to raise issues under section 82(1) or 87(2) of the RTA during a hearing for a landlord's application about rent arrears shall provide the other party 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.

[Emphasis Added]

13. The Tenant confirmed receiving notice of the hearing approximately three months prior to the hearing date. However, the Tenant acknowledges neither providing a written description of the issues that he intended to raise, nor did he provide any documentation that he intended to rely upon.

14. Therefore, the Tenant may not raise issues under section 82 during this hearing. The Tenant may be able to raise issues and seek a rent abatement by filing his application at the LTB.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of May 20, 2023, the date the Tenant moved out of the rental unit
2. The Tenant shall pay to the Landlord \$7,737.95 This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application and unpaid NSF charges. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
3. If the Tenant does not pay the Landlord the full amount owing on or before August 5, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 6, 2023 at 6.00% annually on the balance outstanding.

July 25, 2023

Date Issued

Julia Toso

Member, Landlord and Tenant Board

15 Grosvenor St, 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

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

Rent Owing To Move Out Date	\$9,547.95
Application Filing Fee	\$186.00
NSF Charges	\$54.00
Less the amount of the last month's rent deposit	- \$2,050.00
Less the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord	\$7,377.95

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