



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

**Citation:** Housing York Inc. v Eshafi, 2023 ONLTB 48755

**Date:** 2023-07-06

**File Number:** LTB-L-074998-22

**In the matter of:** 421, 10415 Yonge Street  
Richmond Hill ON L4C0Z3

**Between:** Housing York Inc. Landlord

**And**

Saeydeh Eshafi Tenant

Housing York Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Saeydeh Eshafi (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 21, 2023.

The Landlord's agent, Stacy Ellis, attended the hearing.

The Tenant also attended the hearing.

### **Background:**

This matter was originally heard on September 19, 2022. At the time of the hearing the Tenant had made payments into the Board. The Tenant submitted copies of her bank deposit receipts as evidence to show the amount she had paid into the Board.

During the hearing it was discovered that the payments the Board had on file, did not match the payment amounts the Tenant was claiming she had paid.

The Tenant also claimed there was one payment missing from the amount she had paid but at the time of hearing she had not submitted the receipt.

The hearing was adjourned so the Board could investigate the matter and determine if there was an error, and correct it if so needed, and allow the Tenant an opportunity to provide all her receipt payments to the Board.

The Tenant was instructed to provide copies of all her deposit receipts for the payments she made into the Board before the next scheduled 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 \$445.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$14.63. This amount is calculated as follows: \$445.00 x 12, divided by 365 days.
5. The Tenant has paid \$4,015.00 into the LTB since the application was filed.
6. The Tenant has paid \$6,665.00 to the Landlord since the application was filed.
7. The rent arrears owing to June 30, 2023 are \$4,571.17.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. There is no last month's rent deposit.
10. At the hearing the Tenant requested to raise section 82 issues. The Tenant claims her fridge was not working. The Tenant claims the Landlord did not fix the fridge to her satisfaction and the Tenant purchased a new fridge and deducted the full amount of the cost of the fridge from her rent.

Preliminary Issue: Tenant Requested to Raise Section 82 Issues:

11. At the hearing the Tenant requested to raise section 82 issues. The position of the Tenant is that she claims she was experiencing issues with her fridge not working. The Tenant claims she notified the Landlord about the issues but the issues were not dealt with. As a result the Tenant took matters into her own hands and purchased a new fridge and deducted the cost she incurred from her rent. The Tenant submitted a receipt for a fridge

she had purchased, but there was no other documentary evidence submitted pertaining to the Tenant's section 82 issues.

12. The position of the Landlord is that the part of the Tenant's arrears stem from the fact the Tenant deducted the cost of the fridge from her rent. The Landlord claims they are unaware of the Tenant's issues and the Tenant cannot decide to deduct the cost of the fridge from her rent and are seeking the cost of the fridge as arrears the Tenant withheld as rent to compensate herself for the fridge purchase.

### 13. The Act and Analysis

#### Tenant issues

82 (1) At a hearing of an application by a landlord under section 69 for an order terminating a tenancy and evicting a tenant based on a notice of termination under section 59, the Board shall permit the tenant to raise any issue that could be the subject of an application made by the tenant under this Act if the tenant,

- (a) complies with the requirements set out in subsection (2); or
- (b) provides an explanation satisfactory to the Board explaining why the tenant could not comply with the requirements set out in subsection (2).

#### Requirements to be met by tenant

(2) The requirements referred to in subsection (1) are the following:

- 1. The tenant shall give advance notice to the landlord of the tenant's intent to raise the issue at the hearing.
- 2. The notice shall be given within the time set out in the Rules.
- 3. The notice shall be given in writing and shall comply with the Rules.

14. The Tenant failed to submit her section 82 claims regarding the fridge, pursuant the Act, and within the requirements set out in the Board's Rules. While the Tenant submitted a receipt for the fridge, the Tenant did not provide enough detail for the Landlord to know the case to be met. The Tenant failed to disclose any pertinent details like days the issues with the fridge occurred, when and / or if she notified the Landlord, how she did so, and what the Landlord's response was. In the absence of these details the Landlord cannot refute the Tenant's claims as the claims are too vague.

15. The Tenant is required to provide the Landlord with any section 82 issues the Tenant wishes to raise at the hearing. The purpose of disclosure of evidence is to avoid a party being taken by surprise at a hearing but also to encourage settlement. By sharing documents, each party can review the other's documents before the hearing begins and prepare a response. Disclosure of evidence is outlined in the LTB Rule 19.
16. Given the above I denied the Tenant's request to raise section 82 issues at the hearing. The Tenant may file her own application with the Board if she so chooses.

### Landlord's L1 Application

15. The position of the Landlord is that the Tenant's arrears have been long outstanding since the Landlord filed the application in November 2020 when the Tenant owed \$1,456.17. In addition to the original outstanding amount owed to the Landlord, the Tenant missed other rent payments, and deducted the amount of the fridge she claims she incurred. While the Tenant has been paying rent into the Board, and subsequently to the Landlord directly, and the arrears have not grown substantially the Landlord submits these arrears have been long overdue.
16. The Landlord acknowledges the Tenant's long tenure in the rental unit, and is amenable to allowing the Tenant time to pay the arrears and requested an extended order date for eviction and the arrears.
17. The position of the Tenant is that she does not owe the arrears the Landlord is claiming. The Tenant claims the Landlord's ledge is incorrect.
18. The Tenant maintains she had no choice but to purchase a new fridge because of the Landlord's inaction regarding the issues with the fridge and she is not responsible for the cost of the fridge the Landlord is claiming as arrears.
19. As of the day of the hearing the Tenant claims she owes \$56.03. The Tenant offered to make \$0.10 (ten cent) payments to the Landlord as a payment plan to pay the arrears she believes she owes.
20. The Tenant did not submit any documentary evidence to the Board to support her claim of the arrears she believes she owes.
21. I'll note that even if I were to accept the Tenant's claim on her testimony alone, that she owes \$56.03, the repayment plan offered by the Tenant would fall well outside the reasonable time for the Landlord to be repaid, taking over 46 years for the Landlord to receive the arrears.
22. On any application before the Board the party making an allegation has the onus of proving that allegation on a balance of probabilities. That means the Landlord here must lead sufficient evidence to establish it is more likely than not the Tenant owes the arrears the Landlord is claiming.

23. On a balance of probabilities means the Landlord must show that their version of events, in this case the arrears the Tenant owes, is the more probable and should succeed. Saying something is proven on a balance of probabilities simply means that it is more likely than not to have occurred. It means that it is probable, i.e., the probability that some event happened is more than 50%--indeed, 50.1% is sufficient. In all cases, the decision maker must weigh up the evidence and decide which version is most probably true. Consequently, the real truth may never be known. All that can be done is to decide which of the parties has presented the most probable version.
24. With respect to the Tenant's claim she does not owe the arrears the Landlord is claiming the burden of proof is on the Tenant to show she has made payments the Landlord has not accounted for. With respect to rent payments the onus rests with the Tenant to provide sufficient evidence to her claim the Landlord's ledger and supporting documents are incorrect. I do not find the Tenant's evidence persuasive enough, relying solely on her oral testimony as evidence she does not owe the arrears being claimed by the Landlord. The Tenant's lack of particulars and specific details regarding her dispute over the arrears are such that I am not satisfied the Tenant has met that burden of proof.

### Relief From Eviction

25. The Tenant was afforded the opportunity to submit to the Board an extended date of eviction she would require, to pay the arrears or find more suitable housing, should the Landlord's request for the extended order for arrears be granted.
26. The Tenant declined to provide any submissions to the Board regarding such request under section 83 of the Act. The Tenant restated she does not owe the arrears the Landlord is seeking and she is not responsible for the fridge.
27. In the absence of any submission from the Tenant I am granting the Landlord's request for an extended eviction and arrears order in order to allow the Tenant time to pay the arrears owed to the Landlord or find more suitable housing.
28. 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 not be unfair to postpone the eviction until July 31, 2023 pursuant to subsection 83(1)(b) of the Act.
29. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
30. This order contains all reasons for the determinations and order made. No further reasons will be issued.

**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:
  - \$5,202.17 if the payment is made on or before July 31, 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 July 31, 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 July 31, 2023
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$4,619.40. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$14.63 per day for the use of the unit starting June 22, 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 July 17, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 18, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before July 31, 2023, then starting August 1, 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 1, 2023.
10. \$4,015 together with any accrued interest that the Tenant paid into the LTB in trust shall be released to the Landlord by the LTB.\*

**July 6, 2023**

**Date Issued**

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Greg Brocanier

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 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.

\*Note: When the LTB directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

**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 July 31, 2023**

Rent Owing To July 31, 2023	\$15,696.17
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	- \$6,665.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$4,015.00
<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>\$5,202.17</b>

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

Rent Owing To Hearing Date	\$15,113.40
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	- \$6,665.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$4,015.00
<b>Less</b> the amount of the last month's rent deposit	- \$
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord</b>	<b>\$4,619.40</b>
Plus daily compensation owing for each day of occupation starting June 22, 2023	\$14.63 (per day)

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