



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

Citation: Nariman Zhran v Wael Abu Yousef, 2023 ONLTB 46690

Date: 2023-06-30

File Number: LTB-L-003139-23

In the matter of: Basement, 4640 ROSEBUSH RD
MISSISSAUGA ON L5M5H2

Between: Nariman Zhran Landlord

And

Wael Abu Yousef Tenant

Nariman Zhran (the 'Landlord') applied for an order to terminate the tenancy and evict Wael Abu Yousef (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes; and because the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

This application was heard by videoconference on May 18, 2023. The Landlord's L1/N4 and L2/N12 applications were heard together.

The Landlord, the Landlord's representative K. Sinipostolova and the Tenant attended the hearing.

Determinations:

L1/N4 Application

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 \$1,280.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$42.08. This amount is calculated as follows: \$1,280.00 x 12, divided by 365 days.
5. The Tenant has made no payments since the application was filed.
6. The rent arrears owing to May 31, 2023 are \$6,400.00. The Tenant did not dispute the arrears owing.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

8. There is no last month's rent deposit.

L2/N12 Application

9. The Landlord served the Tenant with an N12 notice of termination seeking termination of the tenancy for the purpose of residential occupation by the Landlord.
10. The termination date in the notice (the "N12 notice") is February 28, 2023. The Landlord has met the 60 day notice requirement of [s.48\(2\)](#) of the *Residential Tenancies Act*, 2006 (the "Act") and I am satisfied the Landlord has met the declaration requirement of s.72(1)(b) of the Act.
11. I am also satisfied the Landlord has met the one month's compensation requirement of s. 48.1 of the Act. The Landlord provided a credit of one month's rent to the Tenant for the month of February 2023, as evidenced by an email dated February 23, 2023 sent to the Tenant. I am prepared to accept a rent credit may satisfy the requirement of one month's worth of compensation under s. 48.1 of the Act, as the rent abatement was for a period of time prior to the termination date set out in the N12 notice; and the Landlord communicated prior to the termination date in the notice of termination their intention to provide a rent abatement in satisfaction of the one month's compensation requirement under section 48.1.
12. In order to be successful in this application, the Landlord must satisfy the Board that the Landlord, *in good faith*, requires possession of the rental unit for the purpose of residential occupation for at least one year. In *Salter v. Beljinac*, [2001 CanLII 40231 \(ON SCDC\)](#), the court clarified the Landlord's good faith requirement as follows:
- In my view, s.51(1) charges the finder of fact with the task of determining whether the landlord's professed intent to want to reclaim the unit for a family member is genuine, that is, the notice to terminate the tenancy is made in good faith. The alternative finding of fact would be that the landlord does not have a genuine intent to reclaim the unit for the purpose of residential occupation by a family member.
13. I am satisfied that, on a balance of probabilities, the Landlord, in good faith, requires possession of the rental unit for the purpose of residential occupation.
14. The Landlord testified she recently gave birth to a baby in January 2023 and is currently living with her parents in cramped living quarters. As a result, the Landlord must sleep on a mattress on the living room floor and share a washroom with 3 other people. Moreover, given the lack of space, the Landlord's spouse is currently living with his own parents. The Landlord noted she does not have the means to live elsewhere together as a family and thus, she seeks to move into the rental unit for a period of at least one year. The Landlord produced pictures of the mattress and her child's Ontario birth certificate.
15. The Landlord further acknowledged serving a prior N12 in May 2022 for use by her mother, indicating at the time, she also intended to move into the rental unit because her mother was going to act as a support person in the lead up to the birth of her child. This application was never filed.

16. The Tenant challenged the Landlord's professed intent, stating he had dealings with the Landlord's father and believes the Landlord lives in Alberta. He further indicated he believes the Landlord will rent the unit for more money, should he be required to vacate. While not a requirement to prove the Tenant's allegations, the Tenant did not produce any email correspondence or other documentation in support of such allegations.
17. The Landlord acknowledged her father provides assistance with collecting rent and attending to maintenance issues, but noted she is the Landlord on the lease and owner on title to the property. The Landlord further denies living in Alberta and noted she has never demanded a higher rent from the Tenant. I found the Landlord's evidence credible.
18. Based upon the evidence presented, I find the Landlord is correctly named in the application and I am satisfied with the Landlord's expressed intent for the rental unit.

Section 83

19. Section 83 requires that the Board consider all the circumstances in the case, including the Tenant's and the Landlord's situations, to determine if it would be appropriate to delay or deny eviction in the form of section 83 relief.
20. There are substantial arrears owing, as there has been no rent paid since November 2022. The Tenant lives alone and indicated his employment was impacted as a result of being sick. The Tenant has resided in the rental unit for approximately 2.5 years and indicated he is working now. The Tenant would like to stay at the rental unit but did not propose a repayment plan with a reasonable pay-back period. Moreover, given the Tenant's long history of no rent payments, the Tenant has not demonstrated an ability and/or willingness to pay rent going forward. In the event the Tenant was forced to move, the Tenant requested a couple of months to find other accommodations.
21. The Landlord has tried to reach out to the Tenant for a repayment plan, without success. The Landlord seeks a standard order, noting the Landlord's urgent need for a larger, more suitable living arrangement to accommodate the Landlord's entire family. The Landlord's representative indicated the Landlord is currently in a "vulnerable position" and thus, requires the rental unit as soon as possible.
22. I have considered all of the disclosed circumstances of the Tenant and Landlord in accordance with [subsection 83\(2\)](#) of the Act, including the Tenant's personal and financial circumstances, the length of tenancy, payment history, proposed repayment plan and balanced this with any potential prejudice to the Landlord. I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

L1 Application

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:**
 - \$7,866.00 if the payment is made on or before June 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$9,146.00 if the payment is made on or before July 21, 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 21, 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 21, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$6,063.44. 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 \$42.08 per day for the use of the unit starting May 19, 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 21, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 22, 2023 at 6.00% annually on the balance outstanding.
8. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
9. If the unit is not vacated on or before July 21, 2023, then starting July 22, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 July 22, 2023

L2 Application

11. In the event the Tenant voids the order as set out above, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before July 21, 2023.

12. If the unit is not vacated on or before July 21, 2023, then starting July 22, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
13. 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 July 22, 2023.

June 30, 2023
Date Issued

Peter Nicholson
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 January 22, 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 Board 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 June 30, 2023

Rent Owing To June 30, 2023	\$8,960.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,280.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$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 the Tenant must pay to continue the tenancy	\$7,866.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before July 21, 2023

Rent Owing To July 21, 2023	\$10,240.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,280.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$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 the Tenant must pay to continue the tenancy	\$9,146.00

C. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$7,157.44
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,280.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$0.00
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	\$6,063.44
Plus daily compensation owing for each day of occupation starting May 19, 2023	\$42.08 (per day)