



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

**Citation:** RMX Properties Ltd v Effe Asakh, 2023 ONLTB 45449

**Date:** 2023-06-20

**File Number:** LTB-L-005014-23

**In the matter of:** 183 MAURICE DR  
OAKVILLE ON L6K2W8

**Between:** RMX Properties Ltd Landlord

**And**

Effe Asakh (aka Effe Ashakah, Effe Ashak) Tenant

RMX Properties Ltd (the 'Landlord') applied for an order to terminate the tenancy and evict Effe Asakh (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 8, 2023.

The Landlord's agent, Nino Mancini, and the Tenant attended the hearing. The Tenant consulted with Tenant Duty Counsel prior to the hearing. **Determinations:**

Preliminary Issues raised by the Tenant

1. During the hearing, the Tenant raised a few preliminary issues; first, he testified that his name was incorrectly spelt on the N4 notice of termination, in the application, and on the notice of hearing and this should be cause for the N4 to be dismissed. The Tenant testified that he was the only individual in his household by that name and that the correct way to spell his name was Effe Ashakah.
2. The Landlord testified that he had used the name from the lease agreement and that was the name provided by the Tenant. A copy of the lease agreement was submitted into evidence by the Landlord which shows the Tenant's name as Effe Ashakh.
3. I find the discrepancy between the N4 and the lease agreement to be with respect to the letter 'H': the Landlord has it as Asakh when the lease states it should be Ashakh. I do not find this clerical error renders the N4 defective. Further, the Tenant's testimony confirms that he is the only individual living in his unit and who has that name so it is unclear what

confusion there was that would render the N4 defective. Thus, the Tenant's motion to dismiss the application is dismissed.

4. The second preliminary issue raised by the Tenant was with respect to the service of the N4, the application and the notice of hearing. He testified that he received it in the mailbox and not via mail or e-mail. He further testified that he was able to log onto the Tribunals Ontario Portal but did not receive the notice of hearing in the mail nor did he receive the L1/L9 update sheet. He was able to see both on the portal. Thus, the Tenant feels the Landlord's application should be dismissed.
5. The problem with the Tenant's testimony is that his evidence with respect to the service of the N4 supports the Landlord's certificate of service which indicates it was left in the mailbox. Thus, I find the N4 was served properly and is a valid notice.
6. In terms of the notice of hearing and update sheet – the only way the Tenant would have been able to access the portal and see the documents is if he received the personal identification number pertaining to his file and used that to log-on to the portal. This would have come from the Board with the notice of hearing.
7. Thus, I do not find that there was any service error with respect to the documents nor do I find the Tenant was unaware of the allegations in the application. The Tenant's motion to dismiss the application is dismissed.
8. Finally, the Tenant raised a preliminary issue with respect to his rent; he testified that while the rent on the N4 and application stated it was \$1,600.00, he had been paying \$1,650.00 which is also found on his lease agreement.
9. The Landlord testified that in November 2022, which was the last payment he received from the Tenant, the Tenant had paid \$1,600.00 based on a conversation between the parties where the Tenant had said he no longer required a parking spot; thus, the Landlord explains that the \$50.00 was removed from his rent as that was the cost of the parking spot.
10. The Tenant submits that he is continuing to occupy a parking spot.
11. Based on the evidence before the Board, I find that the lawful monthly rent is \$1,600.00. I say this based on the evidence of the Landlord which was consistent, clear and cogent, while the Tenant's evidence was contradictory; while he testified that he always paid \$1,650.00, the evidence before the Board was his last payment was \$1,600.00, confirming the Landlord's evidence.

#### L1 APPLICATION

12. 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.

13. As of the hearing date, the Tenant was still in possession of the rental unit.
14. The lawful rent is \$1,600.00. It is due on the 1st day of each month.
15. Based on the Monthly rent, the daily rent/compensation is \$52.60. This amount is calculated as follows: \$1,600.00 x 12, divided by 365 days.
16. The Tenant has not made any payments since the application was filed.
17. The rent arrears owing to June 30, 2023 are \$11,200.00.
18. The Landlord seeks a standard, voidable eleven-day order.

#### Tenant's Request for Relief

19. The Tenant does not dispute the arrears as claimed by the Landlord.
20. The Tenant is also unable to clear the arrears within eleven days.
21. The Tenant testified that the reason he fell into arrears was because he had a roommate helping him pay the rent, who left suddenly, leaving him with the entire monthly rent to pay each month.
22. The Tenant seeks to preserve his tenancy and proposes a repayment plan where he would pay an additional \$100.00 each month until the arrears are paid in full.
23. The Tenant testified that this tenancy began in March 2022 and he lives in the rental unit alone. He is also self-employed.
24. The Tenant submits that in the alternative, he would require 30 days to move out.
25. The Landlord opposes any repayment plan from the Tenant as he has not received rent in seven months. The Landlord also opposes the extension of 30 days.

#### ANALYSIS

26. Based on the evidence before the Board, I find the arrears and costs owing to June 30, 2023 total \$11,200.00. I say this based on the Landlord's evidence that he did not receive rent for the past seven months and the Tenant's confirmation that his last payment to the Landlord was in November 2022.
27. With respect to the Tenant's request for relief, I find that the amount of time it will take for the Tenant to repay the arrears is excessive in length and not justified under the circumstances. Further, there has been no good faith payment since the application was filed.
28. Given the length of this tenancy and the significant arrears outstanding, I do not find a delay in eviction to be appropriate either.
29. A standard order shall issue.

30. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
31. The Landlord collected a rent deposit of \$1,600.30 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.
32. Interest on the rent deposit, in the amount of \$50.97 is owing to the Tenant for the period from March 1, 2022 to June 8, 2023.
33. 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 Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
34. This order contains all of the reasons for the decision within it. No further reasons shall 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:**
  - \$11,386.00 if the payment is made on or before June 30, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
  - \$12,986.00 if the payment is made on or before July 1, 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 1, 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 1, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$8,555.53. 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 \$52.60 per day for the use of the unit starting June 9, 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 1, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 2, 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 1, 2023, then starting July 2, 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 2, 2023.

**June 20, 2023**

**Date Issued**

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Sonia Anwar-Ali

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 2, 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 June 30, 2023**

Rent Owing To June 30, 2023	\$11,200.00
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	- \$0.00
<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>\$11,386.00</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before July 1, 2023**

Rent Owing To July 31, 2023	\$12,800.00
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	- \$0.00
<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>\$12,986.00</b>

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

Rent Owing To Hearing Date	\$10,020.80
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	- \$0.00
<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	- \$1,600.30
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$50.97

<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>\$8,555.53</b>
Plus daily compensation owing for each day of occupation starting June 9, 2023	\$52.60 (per day)