



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Galaxy Real Estate Core Ont Properties v Fernando Ferreira, 2023 ONLTB 44283

**Date:** 2023-06-15

**File Number:** LTB-L-018187-23

**In the matter of:** 902, 120 DUNDAS ST E  
MISSISSAUGA ON L5A1W6

**Between:** Galaxy Real Estate Core Ont Properties Landlord

**And**

Fernando Ferreira Tenant

Galaxy Real Estate Core Ont Properties (the 'Landlord') applied for an order to terminate the tenancy and evict Fernando Ferreira (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 8, 2023. The Tenant attended the hearing. The Landlord was represented at the hearing by Melissa Anjema.

**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.

*Lawful Rent*

3. The Landlord's application claims the lawful rent is \$1,780.10. The Tenant claims the lawful rent is \$1759.10.
4. The dispute over the lawful rent centres around and alleged Notice of Rent Increase (NORI) given to the Tenant March 14, 2022. The Tenant alleges he never received the NORI. He further alleges the NORI submitted into evidence by the Landlord's representative is a forgery.
5. Sabaudin Hamzaraj testified for the Landlord. He has been the property manager at the rental unit since 2010. He told the Board his wife put, Trita Hamzarj, put the NORI under the Tenant's door March 14, 2022. Ms. Hamzari, also works at the rental unit as an administrator.

6. The Tenant submits Mr. Hamzaraj's testimony is not reliable as he was not the one who put the NORI under the door.
7. I agree with the Tenant Mr. Hamzaraj's testimony is hearsay. However, the Statutory Powers Procedure Act ('SPPA') gives tribunals broad jurisdiction to admit evidence that would be presumptively inadmissible in civil proceedings, including hearsay evidence.
8. I accept Mr. Hamzaraj's evidence that his wife put the NORI under the door. I found he testified in a forthright and credible manor. I also note his testimony was unchallenged by the Tenant by cross-examination, despite given every opportunity to do so.
9. Despite the Tenant's insistence the NORI provided to the Board was a forgery, there was no evidence led by the Tenant suggesting this was the case. I reviewed the NORI and I find to be a true copy of the one Mr. Hamzaraj put under the Tenant's door.
10. *LTB Rule 3.1(c)* allows a NORI to be served by placing under a tenant's door. Accordingly, I find the NORI to be valid.
11. For the above reasons, I agree with the Landlord's submission that the lawful rent is \$1,780.10 monthly.

#### *L1 Application*

12. Based on the Monthly rent, the daily rent/compensation is \$58.52. This amount is calculated as follows: \$1,780.10 x 12, divided by 365 days.
13. The Tenant has not made any payments since the application was filed.
14. The rent arrears owing to June 30, 2023 are \$9,048.20.
15. The Landlord is entitled to \$20.00 to reimburse the Landlord for administration charges and \$5.00 for bank fees the Landlord incurred as a result of 1 cheque given by or on behalf of the Tenant which was returned NSF.
16. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
17. The Landlord collected a rent deposit of \$1,780.10 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.
18. Interest on the rent deposit, in the amount of \$19.39 is owing to the Tenant for the period from January 1, 2023, to June 8, 2023.

#### *Relief from Eviction*

19. The Tenant does not dispute he has not made a rent payment since the application was filed. The issue before the Board is whether it is appropriate to grant relief from eviction pursuant to s.83 of the *Residential Tenancies Act 2006*, (the 'Act').
20. According to s. 83 of the Act when the Board hears an application for an order evicting a tenant, the Board must consider whether there are any circumstances that support granting relief from eviction.

21. The Tenant genuinely believed he was entitled to withhold the rent because he was not served a NORI. That being said, the Tenant told the Board he could pay the rent arrears in a prompt manner if I found in the Landlord's favour. No other circumstances were disclosed that would suggest there is basis for relief under s.83 of the Act.
22. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

**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:**
  - \$9,259.20 if the payment is made on or before June 26, 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 June 26, 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 June 26, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$6,147.77. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. 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 \$58.52 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 June 26, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 27, 2023, at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before June 26, 2023, then starting June 27, 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 June 27, 2023.

**June 15, 2023**  
**Date Issued**

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**Bryan Delorenzi**  
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 December 27, 2023 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 26, 2023**

Rent Owing To June 30, 2023	\$9,048.20
Application Filing Fee	\$186.00
NSF Charges	\$25.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$9,259.20</b>

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

Rent Owing To Hearing Date	\$7,736.26
Application Filing Fee	\$186.00
NSF Charges	\$25.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,780.10
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$19.39
<b>Total amount owing to the Landlord</b>	<b>\$6,147.77</b>
Plus daily compensation owing for each day of occupation starting June 9, 2023	\$58.52 (per day)