



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

Citation: Shpak v Maxwell, 2023 ONLTB 33549

Date: 2023-05-02

File Number: LTB-L-029453-22

In the matter of: 12 Robin Crt Barrie
ON L4M5M1

Between: Alina Shpak and Andrei Shpak Landlords

And

Devin Annie Maxwell, Eric P Ferreira and Tenants
Lorna D Walker

Alina Shpak and Andrei Shpak (the 'Landlords') applied for an order to terminate the tenancy and evict Devin Annie Maxwell, Eric P Ferreira and Lorna D Walker (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on March 27, 2023.

The Landlord and the Tenant, Lorna D Walker attended the hearing.

At the hearing the Tenant, Lorna D Walker raised the preliminary issue with respect to the other Tenants stating that they no longer live in the rental unit. I canvassed the parties if they were requesting to amend the application to remove Devin Annie Maxwell and Eric P Ferreira as tenants. The Landlord contested to removing them as tenants from the application as she has no confirmation that they are no longer living in the rental unit. Based on the submissions, I did not consent to amending the application.

Determinations:

1. The Landlords served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenants 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 Tenants were still in possession of the rental unit.

3. The lawful rent is \$2,178.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$71.61. This amount is calculated as follows: \$2,178.00 x 12, divided by 365 days.
5. The Tenants have paid \$21,961.97 to the Landlord since the application was filed.
6. The rent arrears owing to March 31, 2023 are \$7,894.03.
7. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlords collected a rent deposit of \$2,100.00 from the Tenants and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
9. Interest on the rent deposit, in the amount of \$42.46 is owing to the Tenants for the period from November 28, 2020 to March 27, 2023.

Tenant's Section 82 Claims

10. The Tenant testified that she withheld rent from the Landlord due to some issues relating to the tenancy. The Tenant sought an abatement of rent due to the issues raised.
11. Section 82(1) of the Act states:

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 issues that could be the subject of an application made by the tenant under the Act.

12. The Tenant did not dispute the arrears of rent; however, she did tell the Board that she felt she was entitled to the following abatements totalling \$1,249; \$200.00 for the inconvenience of two "no show" showings; \$94.00 for maintenance supplies; and \$900.00 for a "poop incentive".

No Shows - \$200.00

13. The Tenant testified that while the Landlord was attempting to sell the property, there were two occasions when the showing didn't happen, and she was not given prior notice. She told the Board that she deducted \$200.00 as compensation for the inconvenience but stated that she understood this was likely not acceptable. The Landlord testified that she had no control over people not showing up for the scheduled showings and should not be responsible for compensation the Tenant. I find that while the instances of "no shows" may have been inconvenient, the Tenant is not permitted under the Act to arbitrarily deduct rent for such reasons. Therefore, this amount will not be granted.

Poop Incentive - \$900.00

14. The Landlord testified that in order to manage complaints coming from the neighbours, regarding excessive amounts of poop on the property, the Landlord offered the Tenant \$100.00 off her rent on a month-to-month basis, she described this as a “poop incentive”. She told the Board that this was not guaranteed each month, and at no point in time did she tell the Tenant it would be permanent. The Landlord stated that once the relationship deteriorated and the Tenant stopped communication with her, she no longer offered the incentive. The Tenant disputed this and told the Board that although she felt it was “ridiculous” she was going to continue to take the money. She agreed that the relationship broke down, but still felt the Landlord should honour the incentive for nine additional months because that was the agreement. While the Landlord and Tenant may have agreed to the \$100.00 “poop incentive” for a period of time, the Landlord is not responsible for cleaning up after the Tenant’s dog and is not is not responsible for compensating the Tenant for doing so. Therefore the amount of \$900.00 will not be granted.

Maintenance Supplies - \$94.00

15. The Tenant testified that she purchased furnace filters and smoke detector batteries because the Landlord failed to do so. The Landlord disputes that she failed to replace the filters and batteries in the smoke detectors and told the Board that during this time the Tenant refused her entry. Although the Tenant failed to produce receipts, the Landlord did not dispute that the Tenant purchased the items. Given that the cost of \$94.00 seems reasonable in the circumstance I find that the Tenant is entailed to this amount.

Relief from eviction

16. At the hearing the Tenant expressed her desire to preserve the tenancy. She told the Board that the arrears are not a result her inability to pay, but rather a result of the ongoing strained relationship between her and the Landlord. The Tenant proposed a payment plan of \$250.00 per month towards the arrears, which would take 32 months to pay off. The Landlord was not in agreement with the payment plan proposed by the Tenant.
17. In addition, the Tenant requested that should the payment plan not be excepted, she requested a delayed eviction of 6-8 months to give her additional time to find alternative accommodations. She indicated that she works from home and requires space to store inventory. In giving consideration to the Tenant’s circumstances, a delayed eviction would be appropriate, however 6-8 months is an unreasonable amount of time.
18. The Landlord told the Board that the ongoing stress surrounding the tenancy and the strained relationship between the Landlord and Tenant has caused her a significant amount of stress and has had a negative impact on her health. She requested a standard order 11-day from the Board.
19. 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 May 31, 2023 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlords or to the LTB in trust:**
 - **\$12,342.03** if the payment is made on or before May 31, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after May 31, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before May 31, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlords **\$5,599.04**. 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 Landlords owes on the rent deposit are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlords compensation of \$71.61 per day for the use of the unit starting March 28, 2023 until the date the Tenant moves out of the unit.
7. If the Tenants do not pay the Landlords the full amount owing on or before May 31, 2023, the Tenants will start to owe interest. This will be simple interest calculated from June 1, 2023 at 6.00% annually on the balance outstanding.
8. The Landlords or the Tenants 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 May 31, 2023, then starting June 1, 2023, the Landlords 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 Landlords on or after June 1, 2023.

May 2, 2023
Date Issued

Natalie James
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 1, 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.

*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 May 31, 2023

Rent Owing To May 31, 2023	\$34,212.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$21,961.97
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}	- \$94.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$12,342.03

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

Rent Owing To Hearing Date	\$29,611.47
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$21,961.97
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	- \$2,100.00
Less the amount of the interest on the last month's rent deposit	- \$42.46
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$94.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00

Total amount owing to the Landlord	\$5,599.04
Plus daily compensation owing for each day of occupation starting March 28, 2023	\$71.61 (per day)