



Order under Section 69 Residential Tenancies Act, 2006

Citation: Alazawi v Robertson, 2023 ONLTB 33267

Date: 2023-05-01

File Number: LTB-L-027831-22

In the matter of: 18 VALLEYBROOK DRIVE
KITCHENER ON N2A0K1

Between: Ayad Ghazi Khazal and Fatin Farouq Alazawi Landlord

And

Frederick Perry and Jaimey Robertson Tenant

Ayad Ghazi Khazal and Fatin Farouq Alazawi (the 'Landlord') applied for an order to terminate the tenancy and evict Frederick Perry and Jaimey Robertson (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. The Tenants raised issues pursuant to section 82 of the Residential Tenancies Act, 2006

This application was heard by videoconference on April 17, 2023.

The Landlords, the Landlords representative H. Hao and the Tenant Jaimey Robertson attended the hearing. The Tenant JR acknowledged having the authority to speak on behalf of the Tenant Frederick Perry.

Determinations:

L1 Application

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 \$2,700.00. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$88.77. This amount is calculated as follows: \$2,700.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to April 30, 2023 are \$40,500.00. The total amount owing for rent by the Tenants to the Landlords thus currently exceeds the Board's jurisdictional limit of \$35,000.00, with the balance being waived by the Landlords on this application.
7. The Tenants do not dispute the arrears owing, with the exception of one month's rent claimed as unpaid in November 2021. The Tenants did not provide any bank statements or other proof of payment to support the purported rent payment in November 2021. JR indicated the parties relationship deteriorated in November 2021 due a dispute over whether this payment was made, and claimed the Tenants stopped making payments at least partially because the trust was broken between the parties. There is no right to withhold rent and moreover, the Tenant's explanation seems to contradict the fact the Tenants subsequently made payments from December 2021 to February 2022. I find the evidence of the Landlords more believable that rent was not paid in November 2021.
8. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlords collected a rent deposit of \$2,700.00 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. Interest on the rent deposit, is owing to the Tenants.

Section 82

10. Section 82 of the *Residential Tenancies Act, 2006* (the "Act") permits the Tenants to raise any issue that could be the subject of an application provided certain notice requirements are met. In accordance with section 82 of the Act, the Tenants allege 3 breaches on the part of the Landlords, as detailed below:
11. The Tenant Jamie Robertson (JR) testified that the Tenants were served with multiple notices of termination, evidenced, in part, by a Form N13 dated March 21, 2022; a partially signed Form N11 signed March 21, 2022; and a Form N12 dated July 29, 2022. While the substance of the notices are not before me, I do not find the mere service of those forms rise to the level of constituting harassment or substantial interference with the Tenants' reasonable enjoyment of the rental unit. The Landlord also did provide a plausible explanation for the service of the Form N13 and Form N11, indicating she initially intended to do repairs/renovations in order to construct a legal basement apartment before the property's eventual sale. Moreover, the Landlord indicated that based upon conversations with the Tenant, she thought the Tenant would be looking to move out at the end of March 2022.

12. JR also claimed the washing machine did not work since August 29, 2022. The Landlord acknowledged the washing machine stopped working, but indicated she believed it was the Tenant's responsibility to fix due to the appliance being in good working order at the commencement in the tenancy, and the wording of the lease agreement which provided: "*Tenant agrees to maintain said appliances in a state of ordinarily cleanliness at the Tenant's cost*". I disagree. The Tenant's section 82 written submission seeks an order that the washing machine be fixed and that the Tenants be compensated for "*expense caused*". While the Tenants did not provide any evidence as to the expense caused by the washing machine malfunction, my order shall provide for the Landlords to repair the washing machine in a timely manner.
13. JR also claimed the Landlords contacted her – and her spouse's – past employers and provided them with embarrassing and "fraudulent information" about the Tenants. The Landlord acknowledges contacting the Tenants' work references for the purpose of ascertaining whether the employment information provided at the commencement of the tenancy was authentic. The Landlord also produced a responding email from one of the Tenant's past employers stating the employment letter provided by the Tenants "*does not appear to be authentic.*" The Tenant indicated - that by choice - she is no longer working at her prior employment. Moreover, the Tenant indicated the email from her spouse's prior employer was issued through another department and thus, inaccurate.
14. While a determination of the authenticity of the Tenants employment information is not before me, the Tenant did not request any compensation in their section 82 written claim. Moreover, although JR indicated it was "embarrassing" for the Landlords to make such inquiries, her testimony lacked particulars as to how they were adversely impacted and/or why they should be entitled to compensation. This claim is, accordingly, dismissed.

Section 83

15. Section 83 of the *Residential Tenancies Act, 2006* (the "Act"), requires that I consider all the circumstances, including the Tenants' and the Landlords' situations to determine if it would be appropriate to grant section 83 relief from eviction.
16. The Landlord indicated she has sent the Tenants numerous emails about a rent repayment plan, without success. She further indicated the arrears are substantial and causing the Landlords to exhaust their entire line of credit as a result. There have been no rent payments made since March 2022 and the Landlord indicated the Tenants have also not paid utilities for some time.
17. The Tenants' family moved into the rental unit in October 2021 and the arrears of rent commenced one month later, in November 2021. The Tenant, JR, indicated the Tenants have the money and can pay the arrears in full provided they are given some time to do so.

There are substantial arrears owing and although the Tenants indicated they can pay in full, the Tenants' currently monthly income is unclear. Moreover, the Tenants' failure to pay any rent over several months, suggests an inability and/or unwillingness to comply with a repayment plan moving forward.

18. I have considered all of the disclosed circumstances in accordance with subsection 83 of the *Act*, including the circumstances noted above, the impact of COVID-19 on the parties and whether the Landlords attempted to negotiate a repayment agreement with the Tenants, 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 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:**
 - \$43,386.00 if the payment is made on or before May 12, 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 12, 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 12, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$35,000.00 which represents the maximum jurisdictional amount for rent owing and compensation.
6. The Landlords or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
7. If the unit is not vacated on or before May 12, 2023, then starting May 13, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. 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 May 13, 2023.
9. The Landlords shall repair or replace the washing machine on or before May 31, 2023. In the event the Landlords do not perform the necessary repair or replacement of the washing machine on or before May 31, 2023, the Tenants shall be entitled to an on going five per

cent rent abatement beginning with the June 2023 rent period and continuing each subsequent month until the washing machine is repaired or replaced.

May 1, 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 November 13, 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 12, 2023

Rent Owing To May 31, 2023	\$43,200.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	\$43,386.00

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

Rent Owing To Hearing Date	\$39,309.09
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	- \$2,700.00
Less the amount of the interest on the last month's rent deposit	- \$17.39
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	\$35,000.00 the maximum jurisdictional amount for rent owing and compensation

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