



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

**Citation:** Azan Holdings Inc. v Fowlie, 2023 ONLTB 30283

**Date:** 2023-04-14

**File Number:** LTB-L-047540-22

**In the matter of:** 182 MOSLEY ST  
WASAGA BEACH ON L9Z2K1

**Between:** Azan Holdings Inc. Landlord

**And**

Bernadette Ruth and Sean Fowlie Tenant

Azan Holdings Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Bernadette Ruth and Sean Fowlie (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was previously adjourned from March 01, 2023 in order to give the Tenant time to provide disclosure for issues he intended to raise under section 82 of the *Residential Tenancies Act, 2006* ("Act").

This application was reconvened and heard by videoconference on March 29, 2023 at 09:00 am

The Landlord Representative M. Foghi, the Landlord Agent Afshin Khodabandeh and the Tenant Sean Fowlie attended the hearing.

### **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.
3. The lawful rent is \$1,400.00. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$46.03. This amount is calculated as follows: \$1,400.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The Tenant did not dispute rent arrears owing to March 31, 2023 were \$21,000.00. however, it was their position that the Landlord's failure to address maintenance issues in a timely manner were a mitigating circumstance and the remedies sought, specifically an abatement in rent would offset the arears.

**Tenant section 82 evidence and submissions**

7. The Tenant testified that dating as far back as November 01, 2021 there has been a leak in the roof over the laundry room and that he had informed the Landlord via phone as soon as he noticed the leak. The Tenant then testified that on December 01, 2021, because of the leak not being addressed the ceiling ballooned and collapsed due to oversaturation. Pictures of the ceiling ballooning and the resulting collapse were entered in evidence.
8. He then testified that because of the collapse ceiling and water damage mould had begun to grow as far back as January 2022. Pictures of the exposed laundry room wall, with what appeared to be mould were entered in evidence.
9. It was the Tenant's submission that the Landlord knew of these issues, and it was only as a result of them being raised at the previous hearing and my direction to address any maintenance issues and a subsequent complaint to municipal by-law enforcement that they took action. It was also his position that the speed by which they completed the repairs were indicative of insufficient work that was bound to fail and most likely didn't address the mould according to health and safety standards.
10. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. The Landlord collected a rent deposit of \$1,400.00 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.
12. Interest on the rent deposit, in the amount of \$73.68 is owing to the Tenant for the period from July 1, 2019 to March 29, 2023.

**Landlord's section 82 evidence and submissions**

13. It was the Landlord's position that they were never informed about the maintenance issues until the Tenant raised them at the previous hearing and that prior to that hearing the Tenant had denied them entry. They further submitted that they were unaware of the extent of the problem until they had conducted their own inspection on March 07, 2023 with their contractor.

14. The Landlord Agent, Afshin Khodabandeh, testified that the Tenant never raised any of these issues within the previous year or as part of their annual inspection. It was also his position that once they had completed their assessment on March 07, 2023 they immediately took action having contractors come in and conduct the necessary repairs and remediation including the mould. It was also their position that the work and mould remediation were completed as of March 27, 2023 and done to acceptable standards despite the Tenants' submissions. Pictures of the work completed were entered in evidence.

*Analysis*

15. Section 20(1) of the *Residential Tenancies Act, 2006* (the "Act") states:

**20 (1)** A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.

16. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, the Court of Appeal held that it is necessary to take a contextual approach to determining whether a landlord has breached its maintenance obligations under section 20(1) of the Act and a landlord will not be found liable for such a breach if the landlord responded to the maintenance issue reasonably in the circumstances.
17. Applying this test to the circumstances here I am not satisfied on the balance of probabilities that the Landlord failed to meet their obligations under the Act or failed to comply with health, safety, housing or maintenance standards.
18. First, I am satisfied that the work completed by the Landlord is sufficient. I base this on the photographic evidence submitted by the Landlord and the Landlord's Agent testimony, particularly what stood out to me was when I questioned what the work entailed he specified the steps taken to include removal of all damaged dry wall insulation and the cleaning of the mould. I also base this determination on the fact that the Tenant offered nothing to support his claims to the otherwise.
19. With respect to whether the repairs were done by the Landlord in a timely manner, the Tenant failed to provide any evidence to support the claim that the Landlord had any knowledge of the maintenance issues prior to the March 01, 2023 hearing. Further the pictures the Tenant provided had no date or time stamp so I cannot be certain as to when they were taken and therefore how long the maintenance issues were extant.
20. Further, the Tenant's assertion that this has been a long-standing issue is inconsistent with the fact that the Tenant didn't complain to by-law enforcement until March 9, 2023 as that is the date noted on the report. It was also noted on the report that the Landlord Agent did visit the rental property on March 7, 2023 as testified. Similarly, the report noted that the

repairs would commence no later than March 24, 2023 which again coincides with the Landlords' version of events.

21. Accordingly for these reasons and those above I am satisfied that the Landlord, once aware, did take appropriate and timely action to address the issues and therefore an abatement of rent is not warranted.

**Relief from eviction**

22. 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.
23. The Tenant testified that he had ceased to pay the rent as a result of unemployment. He further testified that he had been in contact with a rent bank and had a genuine intent to maintain the tenancy. Accordingly for these reasons I am satisfied that a postponement to allow the Tenant to secure financing and maintain the tenancy is warranted.

**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:**
  - \$22,586.00 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$23,986.00 if the payment is made on or before May 31, 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 May 31, 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 May 31, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$19,647.19. 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 \$46.03 per day for the use of the unit starting March 30, 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 April 25, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 26, 2023 at 5.00% 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 May 31, 2023, then starting June 1, 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 June 1, 2023.

**April 14, 2023**

**Date Issued**

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Kelly Delaney

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.

**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 April 30, 2023**

Rent Owing To April 30, 2023	\$22,400.00
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>\$22,586.00</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 31, 2023**

Rent Owing To May 31, 2023	\$23,800.00
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>\$23,986.00</b>

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

Rent Owing To Hearing Date	\$20,934.87
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	- \$1,400.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$73.68

<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>\$19,647.19</b>
Plus daily compensation owing for each day of occupation starting March 30, 2023	\$46.03 (per day)