



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

**Citation:** FFH Properties Ltd. v Sucha, 2023 ONLTB 28153

**Date:** 2023-04-06

**File Number:** LTB-L-049207-22

**In the matter of:** 1, 295 OTTAWA ST N Hamilton  
ON L8H3Z8

**Between:** FFH Properties Ltd. Landlord

**And**

Nikola Sucha Tenant

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

This application was heard by videoconference on March 16, 2023. The Landlord's representative, Jackie Struthers, and the Tenant attended the hearing.

### **Determinations:**

1. The Landlord served the Tenant with a valid Notice to End the Tenancy Early for Nonpayment 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 \$1,300.00. It is due on the 1st day of each month.
4. Based on the monthly rent, the daily rent/compensation is \$42.74. This amount is calculated as follows: \$1,300.00 x 12, divided by 365 days.
5. The Tenant has paid \$2,100.00 to the Landlord since the application was filed.
6. The rent arrears owing to March 31, 2023 are \$9,000.00. The Tenant agreed that she owed \$9,000.00 in rent arrears to the Landlord.

7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,300.00 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.
9. Interest on the rent deposit, in the amount of \$49.52 is owing to the Tenant for the period from March 1, 2021 to March 16, 2023.

### **Tenancy Issues**

10. During the hearing the Tenant wanted to raise several tenancy issues, to include damage from a fire in the unit. The Landlord's representative submitted that the Landlord received several disclosures from the Tenant two days before the hearing, but no information regarding fire damage, or any indication that the Tenant would raise any tenancy issues at the hearing. The Board did not receive any disclosures from the Tenant that she intended to raise tenancy issues during the hearing.
11. The Tenant testified that she did not advise the Landlord seven or more days in advance of the hearing that she intended to raise tenancy issues at the hearing. The Tenant offered no explanation why the appropriate notification was not provided to the Landlord or the Board.
12. I find that the Tenant did not provide at least 7 days of advance notice to the Landlord and to the Board that she would be raising tenancy issues at the hearing, or provide a satisfactory explanation why this notification could not be provided, as required pursuant to s. 82(1) and s. 82(2) of the *Residential Tenancies Act, 2006* (the 'Act') and the Board's Rule of Procedure 19.4. Accordingly, in accordance with the Board's Rule of Procedure 19.5, the Tenant's request to consider her tenancy issues at the hearing is denied.

### **Relief from Eviction**

13. The Landlord's representative submitted that the Landlord had conversations with the Tenant via telephone when the N4 was served, and several times thereafter, advising the Tenant that the Landlord was open to arrears repayment options. The representative noted that the Landlord also sent a letter to the Tenant on March 6, 2023, offering to discuss payment terms for the rent arrears. This letter was provided to the Board. The Landlord's representative submitted that the Tenant never proposed any repayment terms in response to the Landlord's offers.
14. The Tenant testified that her Ontario Works (OW) benefits ceased in June 2022, but she anticipates receiving the benefit again in March 2023 after she submitted her tax documents to OW. The Tenant remarked that she currently receives a child benefit of \$500.00 monthly, and when her OW benefits resume, her monthly income will be \$1,600.00. The Tenant noted that she has also applied to the Ontario Disability Support Program (ODSP), and with this additional source of income she will have sufficient funds

to pay the on-going rent, and an additional \$200.00 monthly for the payment of the rent arrears. The Tenant added that \$300.00 of her \$1,300.00 monthly rent is paid by the municipality, and she has \$500.00 in monthly living expenses, in addition to the monthly rent.

15. The Tenant testified further that she is not seeking steady employment as a result of her mental ailments; however, she cleans homes from time to time to supplement her income. The Tenant asserted that she never received a specific arrears repayment plan from the Landlord for her consideration.
16. 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.
17. On the basis of the evidence provided, I am satisfied that the Landlord attempted to negotiate arrears repayment terms with the Tenant; however, the Tenant never provided the Landlord with arrears repayment terms that the Tenant was able to financially sustain – for the Landlord's consideration. I am satisfied that the Tenant did not negotiate with the Landlord for repayment terms suitable for her, even though the Landlord was open to have this discussion.
18. On the basis of the evidence provided I am satisfied that the Tenant has accrued significant rent arrears, and that the Tenant's financial plan to pay for these arrears, and the on-going rent, is conditional upon benefits she had not yet received on the day of the hearing – specifically OW and ODSP. Even with the inclusion of OW benefits, the Tenant's monthly income of \$1,600.00 is insufficient to pay for the Tenant's \$1,000.00 portion of the rent, her \$500.00 monthly living expenses, and an additional \$200.00 monthly payment for rent arrears.
19. I accept that even if the Tenant paid \$200.00 monthly toward the rent arrears, reaching a zero balance of the arrears would require an unreasonably long period of 45 months, and impose financial burdens on the Landlord. I find that this tenancy is not financially viable for the Tenant. For these reasons, and those provided in paragraphs 16 to 18 above, it would be unfair to the Landlord to grant the Tenant with eviction relief.

**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:**
  - \$10,486.00 if the payment is made on or before April 17, 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 April 17, 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 April 17, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$7,220.32. 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 \$42.74 per day for the use of the unit starting March 17, 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 17, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 18, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before April 17, 2023, then starting April 18, 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 April 18, 2023.

**April 6, 2023**

**Date Issued**

Frank Ebner

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 October 18, 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 17, 2023**

Rent Owing To April 30, 2023	\$12,400.00
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	- \$2,100.00
<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>\$10,486.00</b>

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

Rent Owing To Hearing Date	\$10,483.84
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	- \$2,100.00
<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	- \$1,300.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$49.52
<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>\$7,220.32</b>
Plus daily compensation owing for each day of occupation starting March 17, 2023	\$42.74 (per day)