



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

**Citation:** Kumar v Isaac, 2023 ONLTB 19926

**Date:** 2023-02-15

**File Number:** LTB-L-033845-22

**In the matter of:** A1, 31 RANSTONE GDNS  
SCARBOROUGH ON M1K2T6

**Between:** Shankar Kumar Landlords  
Sulochana Das

**And**

Olusegun Asekhome Isaac Tenant

Shankar Kumar and Sulochana Das (the 'Landlords') applied for an order to terminate the tenancy and evict Olusegun Asekhome Isaac (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 31, 2023.

The Landlords and the Tenant attended the hearing. The Landlords' Legal Representative T. Sivapatham was also present.

### **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 \$600.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$19.73. This amount is calculated as follows: \$600.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to January 31, 2023 are \$6,060.00.
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 \$600.00 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 \$14.39 is owing to the Tenant for the period from August 10, 2021 to January 31, 2023.

Section 82 issues:

10. The Tenant raised the following issues under s.82 of the *Residential Tenancies Act, 2006* (the 'Act'):
  - a) Harassment
  - b) Substantial Interference to reasonable enjoyment
  - c) Illegal Entries
  - d) Maintenance Issues: Heat supply and ventilation.
11. As set out below, the Tenant is entitled to a rebate of rent of \$390.00 due to the section 82 issues. This amount will be deducted from the amount owing to the Landlord.
12. The tenancy started on August 10, 2021. The rental unit is a room in the basement of the house. The basement consists of two separate apartment units with two bedrooms and a shared kitchen and bathroom. The Tenant's side is 'A', and the other side is 'B'. The Tenant's rental unit is A1 with a shared bathroom and kitchen with A2. At the start of his tenancy there was one other Tenant in A2 and during his tenancy there was another tenant added to A2.

Harassment:

13. The Tenant testified about the following incidents:
  - a) The harassment by the Landlord started in November 2021 when he started asking the Tenant to move out of the rental unit. The Tenant testified that the Landlord would force him to go look at other properties and take him along in his car. The Tenant stopped going with the Landlord after the fifth time. He said the Landlord coerced him to get in the car. There were no police complaints neither did the Tenant file any application against the Landlord till date.
  - b) The Landlord served him a N12 in March 2022 to harass him more. Once the Landlord served the N12, the Landlord asked him to not pay rent for the next two months, so he stopped paying. The Landlord should not be claiming rent arrears from the Tenant as the Tenant did what he was asked of. Before the N12, he was paying rent normally and when the Landlord stopped him from paying rent, he stopped paying rent completely. The Tenant stated that he did not move out of the rental unit on getting served N12 because he wants the Landlord to compensate him first.

- c) The Tenant testified that up to the date the N12 was served he was verbally abused by the Landlord which caused him psychological issues. No specific dates, incidences or medical report for the same was submitted.
- d) The Tenant also claimed that the Landlord did not clean the shared spaces in the apartment, and he has to do it for the Landlord and the other Tenants so when the Landlord added another Tenant to the room A2, he felt that the Landlord was harassing him by making him do extra work.
- e) The Tenant alleges that the Landlord came into his rental unit on June 30, 2022 and broke his laptop screen, and broke his iPad, and talked about breaking his phone screen. In his own testimony, the Tenant said he had left the rental unit in the afternoon and when he came back in the evening around 7:30 p.m., he felt his room was not the same and that someone had entered. He blames the Landlord for the broken equipment. He testified that he called the Landlord as soon as he found the broken laptop, who told him to call the police and report the same. The Tenant also testified that the police did not take any action but instead told him to go to the Board. There were no photographs, receipts submitted to the Board.
- f) The Tenant also testified that the Landlord took his internet away on July 1, 2022 which was part of his lawful rent. This disruption in service constitutes harassment as he does a lot of online streaming and he agreed to rent this unit as it included internet. The Tenant subsequently had to get his own internet connection but is claiming \$3,500 for internet expenses for July 2022.

14. The Landlord testified to the following:

- a) The Landlord wanted the unit for his own use as his company decided the work from home option. Since he did not have enough space at his own home, he asked the Tenant to find another place verbally and he was only trying to be helpful by taking the Tenant in his own car to see other places. Once the Tenant declined to leave, he served a formal notice in March 2022. Since the Tenant did not move out, he spoke to his manager and the manager organized a space in the office for him. The Tenant neither vacated nor did he pay rent. The Landlord was eventually let go from the job. The Landlord's Legal Representative stated that he had advised the Tenant that the N12 was no longer valid and that the Tenant can continue to stay at the unit.
- b) The Landlord denied being verbally abusive to the Tenant since there were no specific incidents reported that he could reply to.
- c) The Landlord did not take any position on the cleaning of shared spaces.
- d) The Landlord completely denied that he entered the Tenant's unit or broke the Tenant's laptop or other property. The Landlord testified that he never entered the Tenant's room and there was no reason for him to enter or touch his personal belongings. The Tenant has no proof of the same and that he is has not entered any pictures of the broken property or the receipts for the new laptop and phone the Tenant claims he has bought.

- e) The Landlord also testified that internet was never a part of the tenancy, so he never took anything from the Tenant.

### Analysis

15. The *Residential Tenancies Act, 2006* (“Act”) does not contain a definition of harassment. The LTB often has regard to the definition of “harassment in the Ontario Human Rights Code which is “engaging in a course of vexatious comment or conduct or conduct that is known or reasonably ought to be known to be welcome.” Generally, harassment is a behaviour that persists over time. However, serious one-time incidents can also sometimes be considered harassment.”
16. While it is clear find that the parties have had a strained relationship and do not communicate well, I do not find that the Tenant has proven harassment. The Tenant has not shared any specific incidents or dates for me to find that an incident or a series of incidents led to this harassment. The serving of a N12 and the Landlord asking him to move out could consist of harassment if the Tenant had proven to me a reason why the Landlord did it to him. Just stating that the Landlord is greedy and wants more money is not reason enough to say he was harassing him. There is no conduct by the Landlord that the Tenant has been able to prove that was harassing, threatening or coercion.
17. The Landlord took the Tenant to see other rental properties, but once Tenant said he did not want to go, there were no other attempts by the Landlord to coerce the Tenant to go with him or at least the Tenant failed to prove that to me. The issue with the Landlord breaking into the rental unit while the Tenant was away, the Tenant has not submitted a single proof of any broken equipment while he has submitted a plethora of emails that he sent to the Landlord with allegations but not one to prove that the Landlord replied back and threatened him in any way. Just alleging that he knows the Landlord did it without any witness or proof thereof, is a baseless allegation. I cannot make a finding of fact on this basis.
18. The Tenant did raise a lot of issues and allegations against the Landlord, and he has the onus of proving the same factually. The Tenant failed to prove that the Landlord harassed, threatened or coerced him. I did not find any such allegations to be true based on what was presented at the hearing.
19. While the discontinuance of the internet was framed by the Tenant as a harassment issue, I find it is better considered as an allegation of substantial interference and is so addressed below.

### Substantial Interference

20. The Tenant stated that the Landlord bangs on his windows and doors anytime he is at the property. The Tenant did not identify any specific dates when this occurred.
21. The Tenant testified that on [date] another tenant moved into room A2, which shares the common bathroom and the kitchen with the Tenant, and this substantially interferes with his reasonable enjoyment of the rental unit. The Tenant now has an extra person he has

to deal with or clean up after. He claimed that the Landlord's greed made him add more people to tiny rooms.

22. The Landlord testified that the Tenant should not be concerned with who he rents other rental units to, as long as it is not the Tenant's unit. The shared spaces are shared spaces, and everyone is responsible for keeping it clean.
23. Section 22 of the Act says: "A landlord shall not at any time during a tenant's occupancy of a rental unit and before the day on which an order evicting the tenant is executed substantially interfere with the reasonable enjoyment of the rental unit or the residential complex in which it is located **for all usual purposes** by a tenant or members of his or her household." [Emphasis added.]
24. Most of the claims of the Tenant fail to identify any particular incidents or dates or people involved. The Tenant has the burden of proof on a balance of probabilities to demonstrate that the Landlord substantially interfered with his reasonable enjoyment because he added another person to another room which is not the Tenant's rental unit. Having another person to share a common space does in and of itself lead to substantial interference.
25. The Tenant provided insufficient evidence to establish the claim that the Landlord comes and knocks on his windows.
26. I do however find that the Landlord substantially interfered with the Tenant's reasonable enjoyment by removing the Tenant's internet. While the Landlord stated there was no internet provided as part of the lease, there is no dispute that the Tenant had access to internet since the start of his tenancy in August 2021 until July 2022. I find that the internet was part of the lease agreement based on a balance of probabilities and the Landlord without lawful right took it away in July 2022.
27. The Tenant seeks a remedy of \$3,500.00 for his mobile data internet bill plus \$65.00 per month from August 2022 to date for internet.
28. Pursuant to section 16 of the Act, when a landlord or a tenant becomes liable to pay any amount as a result of a breach of a tenancy agreement, the person entitled to claim the amount has a duty to take reasonable steps to minimize the person's losses. I do not find that Tenant took reasonable steps to mitigate his losses by getting an internet connection of his own in July itself. He waited till August 2022 and continued to use his mobile data very well knowing his data usage was high. The Tenant also did not show any receipts for these claims of internet usage and overage charges by the mobile company. Therefore, I am not awarding the \$3,500.00 that the Tenant claimed for his internet bill in July 2022.
29. I will grant the Tenant \$65.00 per month for an internet connection from August till the date of the hearing which totals to \$390.00. The Tenant did not provide receipts but based on my experience of other similar matters before the Board, it seems like this is a reasonable claim.

30. The Tenant is entitled to a rent abatement of \$390.00. This amount will be deducted from the amount owing to the Landlord. This amount represents the cost of internet connection from August 2022 until January 2022.

Illegal Entries:

31. The Tenant alleged that the Landlord entered his rental unit three times illegally but most of the other entries were concerned with the Landlord coming into the shared space of the property and not the rental unit. The Tenant did not specify and dates or times when the Landlord came to the shared spaces or how often. He stated that the Landlord came once a week to look at the property but did not specify why and how that affected the Tenant.
32. One specific alleged illegal entry occurred when the Tenant complained to the Landlord that the heat in his unit was not working, and the Landlord told him that he will come look at it but did not specify a time or date. The Landlord came on or around November 24, 2021 and entered the Tenant's room. The Tenant was present in the room, at the time unknown to the Landlord was startled by the Landlord's entry. After the initial verbal discussion about the Landlord entering without notice, the Tenant let the Landlord continue to fix the heat. The second time was on June 30, 2022 when the Landlord came and broke his stuff which has been addressed above in the harassment analysis.
33. The Landlord testified that the Tenant had complained about no heat in the rental unit so making it a priority, he went to the rental unit unannounced. The Tenant never asked him to leave so he fixed the issue and went away.
34. Subsection 27(1) of the Act states:

27 (1) A landlord may enter a rental unit in accordance with written notice given to the tenant at least 24 hours before the time of entry ...

[Emphasis added.]

35. Here the key term is rental unit. Under the tenancy agreement and the Tenant's evidence, the rental unit was his room and not the entire house, which in essence, was common areas shared by other residents. The Landlord coming to rental unit for regular maintenance or cleaning cannot be deduced as illegal entries. Again the onus lies on the Tenant to prove that the Landlord came illegally to the rental unit and how it affected him.
36. Based on the evidence before the Board, I find that the Landlord did not illegally enter the rental unit on illegal entries claimed. I say this based on the Tenant's own evidence that the Landlord did not enter his room, rather, he attended the premises without providing proper notice to all Tenants
37. The Act does not require notice be served prior to entry in common areas as they are not part of the 'rental unit'.
38. Subsection 27(1) of the Act states
- 26 1) A landlord may enter a rental unit at any time without written notice,

- (a) in cases of emergency; or
- (b) **if the tenant consents to the entry at the time of entry.**

[Emphasis added]

39. I do find that the Landlord's entry to address a disrepair issue was illegal. The Landlord did not serve the Tenant with a proper notice and did not knock on the Tenant's door to request an entry. The Tenant stated that he was startled to see the Landlord in the room but after the initial conversation, the Tenant permitted the Landlord to enter to complete the repairs. The Landlord did enter the rental unit illegally.
40. The Tenant did not ask for a remedy for the illegal entries. Therefore, I cannot grant him anything. The Landlord must keep the Act in consideration before entering a rental unit and give proper notice of entry to a Tenant.

Maintenance Issues:

41. The Tenant raised two maintenance issues: Lack of heat and lack of ventilation.

Lack of heat

42. The Tenant testified that when he came to look at the unit, there was central heat but after the Tenant left to get his belongings, the Landlord took out the venting from his room. The Tenant realized this when the temperatures fell in November 2021. On November 24, 2021, the Tenant called the Landlord and complained of lack of heat. The Landlord came subsequently and fixed the heat issue. The heat issue returned after three days but he never complained again to the Landlord because he believes the Landlord is doing it on purpose. According to the Tenant, the heat works fine upstairs in the house except in his room.
43. The Landlord testified that the heat works consistently throughout the entire house. When the Tenant complained in November 2021, he went to look and the Tenant was satisfied that the heat was working fine. Since then, the Tenant has not complained to him again about the heat. He has been made aware of the same today for the first time. The Tenant did not give disclosure of this issue before the hearing.

Lack of ventilation

44. The Tenant testified that the rental unit was devoid of proper ventilation system as there is no window in the kitchen or bathroom. This lack of ventilation caused him to visit the ER on January 11, 2022. The report submitted only mentioned the reason for the visit as chest pain and shortness of breath. There was no doctor's report with a diagnosis relating the lack of ventilation and the Tenant's symptoms. The Tenant informed Landlord of the issue via email, on October 19, 2022. As per the Tenant's testimony after the email, the Landlord came and tried to punch the Tenant on his face, and they had an argument about the same.

Analysis

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

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.

46. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, the Court of Appeal held that the LTB should take a contextual approach and consider the entirety of the factual situation in determining whether there was a breach of the landlord's maintenance obligations, including whether the landlord responded to the maintenance issue reasonably in the circumstances. The court rejected the submission that a landlord is automatically in breach of its maintenance obligation as soon as an interruption in service occurs.

47. On any application before the Board, the person who alleges any particular incident or event occurred has the burden of leading sufficient evidence to establish that it is more likely than not that their version of events is true. In this case that burden falls on the Tenant.

48. I find based on the evidence before me that the lack of heat was addressed by the Landlord in a timely manner and then the Tenant never complained about it again. The Landlord cannot be held liable for maintenance related issue if the Tenant fails to notify the Landlord. I do not find the Landlord in breach for the same.

49. For the lack of ventilation, I do not find that the Tenant led enough evidence to show that the lack of ventilation was a breach of any required building code or municipal standards or caused him the chest pain. The Tenant did not lead enough evidence to convince me that he has notified the Landlord about the lack of ventilation in the unit. Instead, the Tenant opened the kitchen window in the other apartment in the basement without permission from other residents who then complained to the Landlord.

50. Hence, I do not find that the Landlord has breached his s.20 obligations with respect to these two issues.

#### Relief from eviction

51. 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.

52. The Tenant stated that he is a student but has never missed rent payment before the Landlord served him the N12 and asked him not to pay rent thereafter till he vacates the unit. Therefore, the Tenant stopped paying rent and now he wanted the Landlord to compensate him for the wrongs he did and then he will vacate. The Tenant did not provide of any other circumstances surrounding him that I should consider under s.83 of the Act.



53. The Landlord did state that he had lost his job and having to own the property and pay mortgage and other expenses can be difficult especially since the Tenant had not paid rent in months.

**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:**
  - \$7,656.00 if the payment is made on or before April 23, 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 23, 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 23, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$5,241.61. 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 and the rent abatement/rebate awarded to the Tenant 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 \$19.73 per day for the use of the unit starting February 1, 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 23, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 24, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before April 23, 2023, then starting April 24, 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 24, 2023.

**April 12, 2023**

**Date Issued**

\_\_\_\_\_  
Sheena Brar

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 24, 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 23, 2023**

Rent Owing To April 30, 2023	\$7,860.00
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	- \$390.00
<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>\$7,656.00</b>

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

Rent Owing To Hearing Date	\$6,060.00
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 of the last month's rent deposit	- \$600.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$14.39
<b>Less</b> the amount the Landlord owes the Tenant for an abatement	- \$390.00
<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>\$5,241.61</b>
Plus daily compensation owing for each day of occupation starting February 1, 2023	\$19.73 (per day)