



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** 2817808 Ontario Corporation v Deshane, 2023 ONLTB 17189

**Date:** 2023-02-02

**File Number:** LTB-L-029928-22

**In the matter of:** 1, 598 LANSDOWNE DR  
OSHAWA ON L1G1W4

**Between:** 2817808 Ontario Corporation

Landlord

**And**

Candice Deshane

Tenant

2817808 Ontario Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Candice Deshane (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 19, 2023.

The Landlord's Legal Representative Elina Valilieva and the Landlord's Agent Maksym Shuyravlov and the Tenant 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 \$1,568.00. It is due on the first day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$51.55. This amount is calculated as follows: \$1,568.00 x 12, divided by 365 days.
5. The Tenant has paid \$8,640.00 to the Landlord since the application was filed.
6. The rent arrears owing to January 31, 2023, are \$5,403.00.
7. The Landlord incurred costs of \$186.00 for filing the application. Given the outcome below, the Board is not ordering costs to be paid.
8. The Landlord collected a rent deposit of \$1,550.00 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. The Tenant requested that the Board consider maintenance issues in accordance with section 82 of the *Residential Tenancies Act, 2006*, (the 'Act'). Sub-section 82(2)1 of the Act specifies that the Tenant shall give advance notice to the Landlord of any issues they intend to raise at a hearing.
10. The Landlord submitted that the issues had not been disclosed to them in accordance with the Rules and asked the Board not to consider them.
11. The Tenant confirmed that they had not disclosed the issues to the Landlord prior to the hearing, under the mistaken belief that if uploaded to the Board Portal that service on the Landlord had been satisfied. However, the Tenant had also, only uploaded the issues list to the Board's portal on the day of the hearing.
12. As a result, I was not satisfied that the Tenant had complied with the Rules on disclosure and declined to hear these issues. The Tenant was advised to seek legal advice and to submit their own applications with the Board if they wished to pursue them.
13. In accordance with section 83(3)(a) the Board must refuse to grant an application where the Landlord is in serious breach of the Landlord's responsibilities under the Act.
14. The Act does not define 'serious'. Blacks Law dictionary defines serious as being "important; weighty; or momentous".
15. A Tenant may make an application to the Board if the Landlord is withholding a vital service. Section 2(1) of the Act defines a vital service as including heat during the period prescribed in the Regulations.
16. It was uncontested that the Tenant stated that the Landlord had been previously informed of the lack of heat in a bedroom occupied by the Tenant's child. The Tenant stated that the Landlord had been informed in the winter 2021/2022, and that the problem is unresolved as of the date of the hearing. The Tenant stated that in the winter months, particularly in extreme cold periods, that they are unable to use the bedroom for its intended purpose.
17. It was also uncontested that the Tenant submissions on maintenance issues indicate that there are no smoke detectors or carbon monoxide detectors in the rental unit.
18. I am satisfied on a balance of probabilities that the Landlord is in serious breach of their obligations under the act for failing to provide a vital service, heat, during the period prescribed by the Regulations and for failing to ensure appropriate safety equipment particularly smoke detectors and carbon monoxide detectors are installed in the rental unit.
19. As a result of the finding that the Landlord is in serious breach of their obligations, the Board must refuse to grant the application.
20. 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 grant relief from eviction pursuant to subsection 83(1)(a) of the Act.

**It is ordered that:**

1. The Landlord's application for eviction is refused.
2. The Tenant owes the Landlord \$5,403.00 for arrears of rent for the period ending January 31, 2023.
3. If the Tenant does not pay the Landlord the full amount owing on or before February 13, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 7, 2023 at 5.00% annually on the balance outstanding.

**February 2, 2023**

**Date Issued**

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**Robert Patchett**

Vice Chair, 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.

**Schedule 1**  
**SUMMARY OF CALCULATIONS**

A.

Rent Owing To January 31, 2023	\$14,043.00
Application Filing Fee	\$0.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$8,640.00
<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>\$5,403.00</b>

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