



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

**Citation:** Elm Place Inc. v Bondoc, 2023 ONLTB 15554

**Date:** 2023-01-19

**File Number:** LTB-L-024478-22

**In the matter of:** 405, 701 DON MILLS RD  
EAST YORK ON M3C1R9

**Between:** Elm Place Inc. Landlord

**And**

Romeo Roman Bondoc Tenant

Elm Place Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Romeo Roman Bondoc (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 5, 2023.

The Landlord was represented by Bryan Rubin who called Andrea Jones (the 'property manager') as a witness. The Tenant attended the hearing and was supported by his brother, Querobin Bondoc.

### **PRELIMINARY MATTERS**

1. At the end of the hearing, the parties were ordered to file with the Board, as post-hearing submissions, documentation for my consideration. Both parties were directed to file their copies of the tenancy agreement they had in their possession. The Tenant was directed to send bank statements, with copies of cheques pertaining to rent payments he alleged were made, for the period of April 1, 2021 through to the date of this hearing. The Landlord was also directed to send a copy of the Tenant's account ledger from April 1, 2021 through to the date of this hearing. Submissions were received by the Landlord only which demonstrated that the Tenant was provided with one-month free rent for the month commencing April 1, 2021, and that the Landlord incorrectly applied the Tenant's rent payment for September 1, 2022 to the wrong rental unit, resulting in an actual arrears balance of \$1,885.00.

**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 \$1,885.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$61.97. This amount is calculated as follows: \$1,885.00 x 12, divided by 365 days.
5. The Tenant has paid \$13,353.34 to the Landlord since the application was filed.
6. The rent arrears owing to January 31, 2023 are \$1,885.00.
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 \$1,885.00 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 \$58.77 is owing to the Tenant for the period from April 1, 2021 to January 5, 2023.

Tenant's evidence

10. The Tenant contests the outstanding arrears explaining that, first, rent for April 2022 was not paid as he was entitled to one month's free rent as per the tenancy agreement and, secondly, that rent for September 2022 (also alleged to have been in arrears) was paid on September 2, 2022.
11. The Tenant directed the Board to an undated 'Addendum' to the tenancy agreement made with the Landlord's previous property management company, which indicated, among other things, the following term: "The parties have further agreed to offer first month free rent on a 13 month lease." In response to questions from the Board, the Tenant explained that it was his understanding that the one month free rent would apply to April 2022 as he had paid the first and last months rent when the tenancy commenced. His first month's rent payment would have applied to April 2021.
12. The Tenant also directed the Board to a screen shot of banking transactions showing that on September 2, 2022, a cheque numbered as 'Cheque 028' for \$1907.62 was cashed. The Tenant testified that this was the rent paid for September 2022, confirming that he had paid rent for September 2022.

13. In response to questions posed by the Board about the amount of time he would need to either vacate the unit or address the outstanding balance in the event the Landlord's application is granted, the Tenant required "some time".

Landlord's evidence

14. The property manager testified that, based on the records received from the previous property management company (who entered into a tenancy agreement on behalf of the Landlord) the tenancy agreement provided for one month's free rent to be applied at the commencement of the tenancy, which was applied on April 1, 2021. The Tenant's first month's rent was applied to May 2021. As such, the Tenant was required to pay the rent for April 2022, which had yet to be paid. The records also show that payment for September 2022 had yet to be received.
15. In response to questions posed by the Board about a payment arrangement should the Board grant the application, the property manager indicated that the Landlord would be open to a three month period of time given to the Tenant to address the balance.

Post-hearing submissions

16. The Landlord provided a ledger pertaining to the Tenant's unit from April 1, 2021 through to January 3, 2023, and a copy of the tenancy agreement. The ledger indicates that on April 1, 2021 the Tenant was credited a total of \$1,885.00 as a "PROMO: FMR free for 13 month lease". The ledger also indicates that for the month of September 2022, a written entry of "chq#028 posted in error to unit 401 – payment" was made along with a credit of \$1,907.62 in favor of the Tenant, which coincides with the Tenant's evidence that a payment was made by cheque on September 2, 2022.
17. The Tenant did not file any post-hearing submissions as directed, however, in response to an inquiry may by the Board about these submissions, the Tenant responded by email stating the following:

"Hi there,  
Good evening  
Just want to let you know  
I settled my account already  
I realized it is my fault  
Sorry for the inconvenience Sincerely  
Romeo Roman Bondoc"

Analysis

18. Section 83(1) of the *Residential Tenancies Act, 2006* (the 'Act') provides that upon an application for an order evicting a tenant, the Board may, despite any other provision of the

Act or the tenancy agreement: (a) refuse to grant the application unless satisfied, having regard to all the circumstances, that it would be unfair to refuse; or, (b) order that the enforcement of the eviction order be postponed for a period of time.

19. Section 83(2) of the Act provides that if a hearing is held, the Board shall not grant the application unless it has reviewed the circumstances and considered whether or not it should exercise its powers under subsection 83(1).
20. Based on the evidence, I find that that the Tenant was provided with one month of free rent for the month commencing April 1, 2021 in accordance with the tenancy agreement and that rent that was therefore owing for April 2022 on April 1, 2022, valued at \$1,885.00. This amount was not paid in accordance with the tenancy agreement. I also find that the Tenant had paid rent for September 1, 2022 as required under the tenancy agreement which, collectively, results in an arrears balance of \$1,885.00.
21. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of 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 not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act. I am satisfied that the tenancy remains viable and that the Tenant would benefit from additional time to address the outstanding arrears.

**It is ordered that:**

1. The Tenants shall pay to the Landlord \$2,071.00, which represents the arrears of rent (\$1,885.00) and costs (\$186.00) outstanding for the period ending January 31, 2023.
2. The Landlord's application for eviction of the Tenant is denied on the condition that:
  - (a) The Tenant shall make the following payments to the Landlord in respect of the monies owing under paragraph 1 of this order:
    1. Beginning on or before February 15, 2023, the Tenant shall pay the Landlord \$690.33 and shall continue to pay the Landlord \$690.33 per month on or before the 15<sup>th</sup> day of each month during the period of March 15, 2023, to April 15, 2023;
  - (b) The Tenant shall also pay the Landlord the lawful monthly rent as it becomes due on or before the 1<sup>st</sup> day of the month starting February 1, 2023 until the arrears are paid in full.
3. If the Tenant fails to make any of the payments in accordance with paragraph 2, and by the dates required, then:
  - (a) The Landlord may apply, without notice to the Tenant, under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the

tenancy and evicting the Tenant, and for the payment of any new arrears of rent and NSF charges not already ordered under paragraph 1 of this order. The Landlord must make the application within 30 days of a breach of a condition set out in paragraph 2 of this order.

- (b) The balance owing under paragraph 1 of this order shall become payable on the day following the date of default. The monies shall bear interest at the post-judgement interest rate determined under subsection 207(7) of the Act.

**February 2 , 2023**

**Date Issued**

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Emile Ramlochan

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.