



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

Citation: Khan v Might, 2022 ONLTB 13473

Date: 2022-11-29

File Number: LTB-L-012742-22

In the matter of: Unit#1, 734 MOUNTAIN ASH RD
PETERBOROUGH ON K9J8K1

Between: Mohammad Moin Khan Landlord

And

Adrienne Might Tenant

Mohammad Moin Khan (the 'Landlord') applied for an order to terminate the tenancy and evict Adrienne Might (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on September 12, 2022. The Landlord 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 \$1,500.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$49.32. This amount is calculated as follows: \$1,500.00 x 12, divided by 365 days.
5. The Tenant has paid \$4,500.00 to the Landlord since the application was filed.
6. The rent arrears owing to September 30, 2022 are \$1,500.00.
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 \$1,500.00 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 \$14.20 is owing to the Tenant for the period from November 29, 2020 to September 12, 2022.

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Section 82 Issues raised by Tenant at the hearing

10. The Tenant filed a notice of issues the Tenant intends to raise at the hearing pursuant to Section 82 of the *Residential Tenancies Act, 2006* (the 'Act').

The Tenant's Testimony

11. The Tenant raised maintenance issues related to a communal washer and dryer in the residential complex. She first testified that she had issues with both the washer and dryer for two and a half months and sought a rent abatement of 50% for the month of August 2022.
12. With respect to the washer, the Tenant testified that this issue was resolved in a timely manner and therefore, is not part of her section 82 claim. However, the dryer was working only intermittently during the period June 10, 2022 to September 6, 2022. The Tenant testified that after some back and forth communications with the Landlord, she undertook to obtain a replacement dryer knob from Bowen's Appliance Center ('Bowen's') and install it on the dryer to see if it would resolve the issue.
13. The Tenant testified that she was delayed in taking the old dryer knob to the appliance center but that she did not notify the Landlord of the delay, nor did she request that the Landlord take over handling the repair. She testified that she picked up a replacement knob on or around August 24, 2022, however it did not resolve the issue with the dryer. She testified that she then notified Bowen's that the dryer issue persisted and they promptly arranged an appointment for September 6, 2022. A service person attended on that date and the dryer was repaired.

The Landlord's Testimony

14. The Landlord testified that he was advised by the tenant in the lower unit of the complex around July 10, 2022 that the dryer was working, contrary to the Tenant's complaint and he did not investigate further. However, when the Tenant raised the issue with him a second time around July 28, 2022, he provided the Tenant with the number for Bowen's appliance centre to coordinate repairs based on her schedule.
15. The Landlord's and Tenant's testimonies coincide on the point that the Landlord provided the contact information and the Tenant undertook to contact Bowen's directly.
16. The Landlord testified that he did not hear back from the Tenant on the matter and assumed it had resolved. The Landlord was billed for and paid the account for the part and the September 6th repair.

S.82 Analysis

17. Subsection 20(1) of the Act states that 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.

18. 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.
19. I find that there was an ongoing maintenance issue with the dryer working intermittently for approximately two and a half months. It is the Landlord's obligation under s.20(1) to make any necessary repairs, and any agreement purporting to transfer responsibility for the dryer repair to the Tenant is inconsistent with the Act and therefore void. Therefore, I find that the Landlord was in breach of s.20(1) of the Act.
20. However, in determining the appropriate rent abatement for this issue, I will take into account the fact that the Tenant volunteered to make arrangements with the appliance store for the necessary parts/and or repairs and that the Tenant did not inform the Landlord of any delays.
21. I therefore find that the Tenant's entitlement to rent abatement is limited to the period from July 8, 2022 to July 28, 2022 when the Tenant advised the Landlord that the dryer was malfunctioning and he did not reply, as well as from August 24, 2022 to September 6, 2022 which is the period the Tenant had to wait for Bowen's to repair the dryer after she made the request. This is a total of 33 days.
22. The Tenant gave no evidence about impact of the lack of use of the dryer during the period in question. I am of the opinion that if it was a major inconvenience to the Tenant, it would have been made a priority and not left unattended for many weeks. I find that an abatement of \$30.00 is appropriate in this circumstance. This amount shall be subtracted from the arrears owing by the Tenant.

Relief from eviction

23. 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. The Tenant intentionally withheld rent based on the maintenance issue raised. The Tenant made no submissions regarding financial hardship or the need for a payment plan. Accordingly, I find that a standard order is appropriate in the circumstance.

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:**
 - \$4,656.00 if the payment is made on or before November 30, 2022. See Schedule 1 for the calculation of the amount owing.

OR

- \$6,156.00 if the payment is made on or before December 9, 2022. 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 December 9, 2022 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 December 9, 2022.**
 5. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit and the rent abatement awarded to the Tenant exceeds the arrears of rent, compensation and the cost of filing the application the Landlord is entitled to by \$766.36. See Schedule 1 for the calculation of the amount owing. However, the Landlord is authorized to deduct from the amount owing to the Tenant \$49.32 per day for compensation for the use of the unit starting September 13, 2022 until the date the Tenant moves out of the unit.
 6. If the Tenant does not pay the Landlord the full amount owing on or before December 9, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 10, 2022 at 4.00% annually on the balance outstanding.
 7. If the unit is not vacated on or before December 9, 2022, then starting December 10, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
 8. 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 December 10, 2022.

November 29, 2022
Date Issued

 Donna Adams
 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 June 10, 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 November 30, 2022

Rent Owing To November 30, 2022	\$9000.00
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,500.00
Less the amount the Landlord owes the Tenant for an abatement	- \$30.00
Total the Tenant must pay to continue the tenancy	\$4,656.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 9, 2022

Rent Owing To December 31, 2022	\$10,500.00
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,500.00
Less the amount the Landlord owes the Tenant for an abatement	- \$30.00
Total the Tenant must pay to continue the tenancy	\$6156.00

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

Rent Owing To Hearing Date	\$5,091.84
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,500.00
Less the amount of the last month's rent deposit	- \$1,500.00
Less the amount of the interest on the last month's rent deposit	- \$14.20
Less the amount the Landlord owes the Tenant for an abatement	- \$30.00
Total amount owing to the Landlord	-\$766.36
Plus daily compensation owing for each day of occupation starting September 13, 2022	\$49.32 (per day)

