



Order under Section 69 Residential Tenancies Act, 2006

Citation: Hazelview Properties v Al-Zaferi, 2022 ONLTB 11968

Date: 2022-11-22

File Number: LTB-L-022854-22

In the matter of: 307, 2870 CEDARWOOD DR
OTTAWA ON K1V8Y5

Between: Hazelview Properties Landlord

And

Bader Al-Zaferi Tenant

Hazelview Properties (the 'Landlord') applied for an order to terminate the tenancy and evict Bader Al-Zaferi (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 9, 2022.

The Landlord's Agent Sylvie Kouri and the Landlord's Legal Representative Allan Kouri the Tenant Bader Al-Zaferi and the Tenant's Legal Representative Ohannes Kechichian attended the hearing.

At the hearing the Tenant's Legal Representative requested an adjournment in order to raise issues under section 82 of *the Residential Tenancies Act, 2006* (the Act). The Tenant had not filed with the Board or served the Landlord with any notice or evidence relating to section 82 issues on this application. I asked the Landlord if they were aware the Tenant had intended to raise issues under section 82 at the hearing and they advised me they were not. I asked the Tenant's Legal Representative why the procedures set out in Board Guideline 11 were not followed. The Tenant's Legal Representative explained the Tenant had filed a Tenant application with the Board in July 2022 and uploaded his evidence with that file and in error believed it would be transferred to this application. I asked the Tenant's Legal Representative when he was retained by the Tenant for this file, and he advised it was six or seven days prior to the hearing but could not provide a precise date.

I asked the Tenant's Legal Representative why he did not file with the Board and serve the Landlord with a notice outlining the issues they intended to raise along with evidence to support the claims given he had six or seven days to do so. He advised me that he was not familiar with the Board's rules and took no steps to either serve the Landlord with notice of section 82 issues or at the very least to advise the Landlord in advance an adjournment would be sought.

The Tenant's Legal Representative submitted it would be unfair to the Tenant to deny an adjournment as it was their position the issues they wanted to raise were a defence to the arrears being claimed by the Landlord. I considered Guideline 11, which is readily available on the Board's website. It says:

If a tenant wants to raise issues under section 82 but has not provided the landlord and the LTB with the required details about the issues and the supporting evidence at least 7 days before the hearing, the tenant will not be permitted to raise the issues under s.82 unless the tenant provides an explanation satisfactory to the LTB explaining why the tenant could not comply with these requirements.

I did not find the explanation of the Tenant's Legal Representative for not following Guideline 11 to be satisfactory. I also considered the prejudice to the Landlord in having to defend allegations under section 82 of the Act without any prior notice of them. I was also mindful of the prejudice the Landlord would experience if an adjournment were granted as the arrears being sought were already beyond the Board's monetary jurisdiction. As a result of the inaction on the part of the Tenant, the prejudice to the Landlord and the fact the Tenant has already filed his own application in relation to the issues he wanted to raise, I denied the adjournment and did not permit the Tenant to raise issues under section 82 of the Act. The hearing proceeded.

Determinations:

1. At the hearing the Landlord's Agent and Legal Representative relied on oral submissions and referred to documents to support their application. The Tenant and their Legal Representative were also given an opportunity to provide submissions and evidence.
2. 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.
3. As of the hearing date, the Tenant was still in possession of the rental unit.
4. The lawful rent is \$1,175.31. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$38.64. This amount is calculated as follows: \$1,175.31 x 12, divided by 365 days.
6. The Tenant has not made any payments since the application was filed.
7. The rent arrears owing to November 30, 2022 are \$37,317.39. This amount was not in dispute at the hearing. I canvassed the Board's monetary jurisdiction with the Landlord's Legal Representative and they advised me they are waiving rental arrears beyond this limit if rental arrears are ordered to be paid.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$1,175.31 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.
10. Interest on the rent deposit, in the amount of \$12.06 is owing to the Tenant for the period from January 2, 2022 to November 9, 2022.
11. The Landlord submitted the property manager had had in person discussions with the Tenant regarding the rental arrears in the hopes of coming to a resolution, but they did not

succeed. The last payment made by the Tenant was March 2, 2020 in the amount of \$1,161.38. This was not disputed by the Tenant.

12. The Tenant's evidence was he has stopped paying rent because he was not satisfied with how the Landlord addressed repairs in the rental unit caused by two floods that occurred in the unit over two years ago. He mentioned walls and carpeting that needed repair and replacement. He mentioned he was not happy with the heat in the rental unit. Given the requirements of section 83(3)(a) of the Act, I inquired about the heat in the unit and the Tenant responded that there is heat in the unit now. The Tenant's Legal Representative submitted that the Tenant had "no heat for hours if not days" in the middle of winter. I gave the Tenant and the Tenant's Legal Representative an opportunity to provide further evidence but they did not. I heard no evidence the Landlord was in serious breach of the Landlord's responsibilities under this Act or of any material covenant in the tenancy agreement. I also heard no legal excuse from the Tenant that permitted him to unilaterally stop paying the monthly rent.
13. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and heard no submissions or evidence that would lead me to believe that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

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:**
 - \$37,503.39 if the payment is made on or before November 30, 2022. See Schedule 1 for the calculation of the amount owing.

OR

 - \$38,678.70 if the payment is made on or before December 3, 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 3, 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 3, 2022**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$35,000.00. 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. As this amount is an ordered payment, the amount is capped at the Board's monetary jurisdiction.

6. The Tenant shall also pay the Landlord compensation of \$38.64 per day for the use of the unit starting November 10, 2022 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 December 3, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 4, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 3, 2022, then starting December 4, 2022, 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 December 4, 2022.

November 22, 2022
Date Issued

John Cashmore
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 4, 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	\$37,317.39
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$37,503.39

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 3, 2022

Rent Owing To December 31, 2022	\$38,492.70
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$38,678.70

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

Rent Owing To Hearing Date	\$36,489.84
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$1,175.31
Less the amount of the interest on the last month's rent deposit	- \$12.06
Total amount owing to the Landlord	\$35,488.47
The Board's monetary jurisdiction and amount ordered to be paid	\$35,000.00
Plus daily compensation owing for each day of occupation starting November 10, 2022	\$38.64 (per day)