



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Rekar v Howell, 2022 ONLTB 11693

**Date:** 2022-11-16

**File Number:** LTB-L-022086-22

**In the matter of:** 1300 Northbrook Street  
Oshawa ON L1G7N6

**Between:** Jenny Rekar Landlord

**And**

Lee Howell Tenant

Jenny Rekar, (the 'Landlord') applied for an order to terminate the tenancy and evict Lee Howell (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 7, 2022.

The Landlord's Representative, Steven Rekar (Landlord's son), and the Tenant attended the hearing.

### **Determinations:**

#### Tenant's Motion to Adjourn

1. At the beginning of the hearing, the Tenant made a motion to the Board to have the matter adjourned. The Tenant submitted that he did not have time from when served notice of the hearing to organize a proper defence, including addressing maintenance issues in the rental unit.
2. The Tenant was asked when he had received the Notice of Hearing. He responded that he had received the notice of hearing "last Thursday" (November 3, 2022). The records from the Landlord Tenant Board indicate that the Notice of Hearing was mailed to the Tenant on October 21, 2022. The Board had not received any evidence from the Tenant prior to the hearing, nor had it received any communication from the Tenant stating that he was seeking an adjournment.
3. The Tenant was asked why he did not make any attempts to disclose any evidence or contact the Board prior to the hearing to request an adjournment, and he stated that he did not have any time because he worked full time.
4. The Board's *Rules of Procedure* deems service to have been effected in this case on Friday October 28, 2022. I am satisfied that at the very latest the Tenant would have received the notice of hearing by Monday October 31, 2022. I do not accept his evidence that he did not receive the notice until Thursday November 3. As noted, he took no steps

to notify the Landlord or the Board of his intention to seek an adjournment of the hearing. I am satisfied that in the circumstances the Tenant was given adequate notice of this hearing.

5. I also reject the Tenant's assertion that he was provided with insufficient opportunity to serve and file evidence in relation to his maintenance complaints.
6. Rule 19.4 of the Board's *Rules* requires a tenant who wishes to raise s. 82 issues in an arrears application such as this to serve a written description of the issues they intend to raise as well as to disclose any evidence upon which they intend to rely at least seven days before the hearing.
7. Rule 19.5 of the Rules of the Landlord Tenant Board states:

A tenant who fails to provide the LTB and other parties with a written description of each issue they intend to raise at the hearing as required in Rule 19.4 shall not be permitted to raise issues under sections 82(1) or 87(2) of the RTA during a hearing for a landlord's application about rent arrears unless the LTB is satisfied that the tenant could not comply with the requirements.

8. I am satisfied that the Tenant was given adequate time to either disclose any evidence that the Tenant intended on relying on at this hearing or to notify the Board that he would require more time to gather his evidence. I am not satisfied that an adjournment would be appropriate in the circumstances given the significant amount of rental arrears owed and given the lack of diligence on the Tenant's part. The Board's non-binding *Interpretation Guideline 1: Adjourning and Rescheduling Hearings* states that the Board will not generally adjourn an arrears application so that the tenant can obtain evidence or prepare their claims under s. 82. I see no reason to depart from that in this case.
9. Therefore, the Tenant's motion to adjourn is denied without prejudice to the Tenant's right to file a maintenance application.
10. The Tenant may wish to seek legal advice (Legal Aid Ontario toll free number: 1-800-668-8258) if he wishes to file his own tenant application regarding his issues.

#### L1 Application

11. 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.
12. As of the hearing date, the Tenant was still in possession of the rental unit.
13. The lawful rent is \$1,800.00. It is due on the 1st day of each month.
14. Based on the Monthly rent, the daily rent/compensation is \$59.18. This amount is calculated as follows: \$1,800.00 x 12, divided by 365 days.
15. The Tenant has not made any payments since the application was filed.

16. The rent arrears owing to November 30, 2022, are \$21,210.00.
17. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
18. The Landlord collected a rent deposit of \$1,800.00 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.
19. Interest in the amount of \$70.67 is owing to the Tenant for the period from June 1, 2019, to November 7, 2022.

#### Section 83 Submissions

20. The Tenant testified that he was informed by another “landlord” that he was allowed to stay in the rental unit free of rent until the rental complex was sold. This other person the Tenant was referring to is a family member of the Landlord, who the Landlord’s Representative admits is a part owner of the rental unit.
21. When asked about who the named landlord is on the lease, the Tenant stated that it was “Jenny Rekar”.
22. The Landlord’s Representative indicated that the Tenant’s assertion was hearsay. Furthermore, the Tenant took no steps to call the alleged family member to prove that he was told that he could live rent free.
23. The Landlord’s Representative submitted that the Landlord is experiencing significant financial hardship and has had to use retirement savings to continue to pay property taxes and utilities.
24. I find that the Tenant’s testimony that a relative of the Landlord allegedly said that he could live in the unit without paying rent is hearsay. I decline to find that this relative made a statement such as this. Given the importance of this hearing, it would have been prudent of the Tenant to have this relative attend the hearing to give testimony to support this allegation.
25. 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 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:**
  - \$21,396.00 if the payment is made on or before November 30, 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 November 30, 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 November 30, 2022.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$18,228.71. 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.
6. The Tenant shall also pay the Landlord compensation of \$59.18 per day for the use of the unit starting November 8, 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 November 30, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 1, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 30, 2022, then starting December 1, 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 1, 2022.

**November 16, 2022**  
Date Issued

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Robert Brown  
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 1, 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.

\*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

**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	\$21,210.00
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/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$21,396.00</b>

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

Rent Owing To Hearing Date	\$19,913.38
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	- \$1,800.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$70.67
<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	- \$
<b>Total amount owing to the Landlord</b>	<b>\$18,228.71</b>
Plus daily compensation owing for each day of occupation starting November 8, 2022	\$59.18 (per day)